

2011 DRAFTING REQUEST

Bill

Received: **05/11/2011**

Received By: **gmalaise**

Wanted: **05/17/2011**

Companion to LRB:

For: **Mary Williams (608) 266-7506**

By/Representing: **Nathan Berken**

May Contact:

Drafter: **gmalaise**

Subject: **Employ Priv - prevailing wage**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.WilliamsM@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Prevailing wage; restoration of prior law; other changes

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 05/13/2011	kfollett 05/17/2011		_____			S&L
/1			mduchek 05/17/2011	_____	lparisi 05/17/2011		S&L
/2	gmalaise 05/20/2011	kfollett 05/23/2011	rschluet 05/23/2011	_____	lparisi 05/23/2011	mbarman 05/23/2011	

FE Sent For:

→ At Intro.

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5/23
R8
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/?	gmalaise	1/16/11 5/11/11	MD	JE PT			

FE Sent For:

<END>

Malaise, Gordon

From: Berken, Nathan
Sent: Tuesday, May 10, 2011 10:38 AM
To: Malaise, Gordon
Subject: RE: Prevailing Wage

Attachments: FINAL Drafting Instructions - Prevailing Wage Legislation 2011-05-10.doc

Hi Gordon,



FINAL Drafting
Instructions - ...

Nathan

--

Nathan Berken
Research Assistant
Office of State Representative Mary Williams
(608) 266-7506

From: Malaise, Gordon
Sent: Saturday, May 07, 2011 11:40 AM
To: Berken, Nathan
Subject: Prevailing Wage

Nathan:

I was out of the office on Friday, but will be in on Monday. We can talk then.

Gordon

DRAFTING INSTRUCTIONS:

Prevailing Wage Legislation

Exemptions from the prevailing wage law (eliminate applicability):

- Towns with populations under 10,000
- Municipalities with populations under 10,000

Prevailing Wage Threshold:

Raise the \$25k threshold under current law to \$250k for multiple-trade projects and \$50k for single-trade projects.

Submission of Payroll Records, Inspection of Payroll Records, Remedies for a Violation of the Prevailing Wage Laws

Return to pre-2008 Act 28. Prior law would again become current law.

Calculation of Prevailing Wage Rate

Current law directs the DWD to use only the highest 51% of wages in the calculation of prevailing wages when no single rate prevails. Modify the formula for calculating prevailing wage when no single rate prevails to include all hours and wages submitted in the annual prevailing wage survey.

Matter of Statewide Concern:

Specify that the prevailing wage law is a matter of statewide concern, and that the enactment of local prevailing wage ordinances or other enactments would be inconsistent with the provisions of the bill.

Truck Drivers

Provide that truck drivers employed in the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of a project, or from a facility dedicated exclusively to a project, are subject to prevailing wage. However, a truck driver who is regularly employed to process, manufacture, pick up or deliver materials or products from a commercial establishment that has a fixed place of business from which the establishment regularly supplies processed or manufactured material or products is not subject to prevailing wage.

Clarification of Minor Maintenance Work: Modify the language in current law in the following way: "A project that is limited to minor crack filling, chip or slurry sealing or other minor pavement patching, not including overlays, ~~that has a projected life span of no longer than five years.~~"

(Rationale - Chip and slurry sealing work has an expected life span of more like 6-8 years. Under this proposal, this minor maintenance work would not be subject to prevailing wage.)

Clarify that certain minor installation projects are not covered under the prevailing wage law:

A contract where the material is installed by suppliers by means of simple fasteners or connectors is not covered if total labor costs do not exceed 20% of total contract costs.

Publicly Funded Private Construction Projects:

Eliminate applicability of the prevailing wage laws to publicly funded private construction projects.

Projects Acquired by or Dedicated to the State/Local Government:

Eliminate applicability of the prevailing wage laws to these types of projects. These include turnkey projects, sanitary sewer or water main projects, as well as road, street, bridges that are acquired. (See LRB 1392/3, p. 3)

Exceptions for Small Residential Properties and Volunteers:

Specify that the prevailing wage laws do not apply to residential public works projects by a local governmental unit or the state involving the erection, construction, repair, remodeling, or demolition of a residential property containing two dwelling units or less.

Also revise the unpaid volunteer exception to specify that the prevailing wage laws do not apply to public works projects for which the local governmental unit or the state is not required to pay labor costs to the contractor.

Incidental Work

Specify that a contractor for a public works project for a local governmental unit or the state may employ a laborer, worker, mechanic, or truck driver in incidental work outside of the person's usual trade or occupation.

Define that incidental work can be up to 25% of hours worked outside of the person's usual trade or occupation in a work week.

Subjourneypersons

Specify that a contractor for a public works project for a local governmental unit or the state may employ a subjourneyperson on the project. Define a subjourneyperson as a worker, other than an apprentice, laborer, heavy equipment operator, or truck driver, who primarily works under the direction of, and who assists, a skilled trade employee in the tools of the specific trade. Ensure that the use of subjourneypersons are universally available on all projects subject to prevailing wage.

Contributions to benefit plans:

Repeal the 2008 Act 28 requirement that to be considered a bona fide economic benefit (e.g., pension, 401(k) health insurance and other fringes), contributions must be made irrevocably on a quarterly basis or if an annual contribution, then that it be escrowed quarterly. (Repeal 66.0903 (1) (am))

Counties and other Local Governments Subject to the Prevailing Wage Law

Retain the provision in 2008 Act 28 requiring that where one unit of government performs work for another unit of government, those projects are subject to prevailing wage.



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2069/?
GMM.../g f

IN 5/13
Wanted Tues 5/17

Ben

1

AN ACT ... relating to: applicability of the prevailing wage law; the thresholds

2

for applicability of that law; calculation of the prevailing wage rate; the

3

treatment of volunteers, truck drivers, subjourneypersons, and incidental work

4

under that law; the submission to the Department of Workforce Development

5

of payroll records of persons performing work that is subject to that law; the

6

inspection of those records; and the remedies for a violation of that law.

Analysis by the Legislative Reference Bureau

Under the current prevailing wage law, certain laborers, workers, mechanics, and truck drivers employed on a state or local project of public works must be paid at the rate paid for a majority of the hours worked in the person's trade or occupation in the county in which the project is located, as determined by the Department of Workforce Development (DWD), and may not be required or permitted to work a greater number of hours per day and per week than the prevailing hours of labor, that is, no more than ten hours per day and 40 hours per week, unless they are paid 1.5 times their basic rate of pay (overtime pay) for all hours worked in excess of the prevailing hours of labor.

2009 Wisconsin Act 28 made various changes to the prevailing wage law, including: 1) expanding the applicability of that law to cover publicly funded private construction projects and certain projects acquired by, or dedicated to, a local governmental unit or the state; 2) lowering the threshold for applicability of that law to a project of public works; 3) requiring contractors to submit payroll records to DWD; 4) requiring DWD to charge a requester for the cost of inspecting payroll

no change

records only if the request is frivolous; and 5) permitting DWD to order back pay and liquidated damages for a violation of that law. This bill alters or eliminates those changes. The bill also makes certain changes relating to: 1) statewide uniformity of the prevailing wage law; 2) calculation of the prevailing wage rate; 3) nonapplicability of the prevailing wage law to small municipalities and small residential projects; and 4) the treatment of volunteers, truck drivers, subjourneypersons, and incidental work under the prevailing wage law.

Specifically, with respect to altering or eliminating changes made by 2009 Wisconsin Act 28:

1. Publicly funded private construction projects, turnkey projects, and acquired or dedicated projects. 2009 Wisconsin Act 28 expanded the applicability of the prevailing wage law to cover publicly funded private construction projects that receive \$1,000,000 or more in direct financial assistance from a local governmental unit. Under prior law, only projects of public works contracted for by the state or a local governmental unit were subject to the prevailing wage law. This bill eliminates coverage of publicly funded private construction projects under the prevailing wage law, so that under the bill only projects of public works are covered under the prevailing wage law.

2009 Wisconsin Act 28 specified that the prevailing wage law applies to: 1) a project in which the completed facility is leased, lease purchased, or otherwise acquired by, or dedicated to, a local governmental unit or the state in lieu of the local governmental unit or the state contracting for the erection, construction, repair, remodeling, or demolition of the facility (turnkey project); and 2) a road, street, bridge, sanitary sewer, or water main project in which the completed road, street, bridge, sanitary sewer, or water main is acquired by, or dedicated to, a local governmental unit or the state, for ownership or maintenance by the local governmental unit or the state (acquired or dedicated project). This bill specifies that the prevailing wage law does *not* apply to a turnkey project or to an acquired or dedicated project.

2. Threshold for applicability to public works projects. 2009 Wisconsin Act 28 lowered the threshold for applicability of the prevailing wage law to a project of public works so that a project of public works for which the estimated project cost of completion is below \$25,000 is not subject to that law. The act also eliminated the authority of DWD to adjust that threshold based on changes in construction costs. Under prior law, that threshold was \$234,000 for a multiple-trade project of public works and \$48,000 for a single-trade project of public works and DWD was authorized to adjust those amounts annually based on changes on construction costs.

This bill sets the threshold for applicability of the prevailing wage law to a single-trade project of public works at an estimated project cost of completion of \$50,000 and the threshold for applicability of that law to a multiple-trade project of public works at an estimated project cost of completion of \$250,000. The bill, however, does not restore the authority of DWD to adjust those thresholds.

3. Submission of payroll records. 2009 Wisconsin Act 28 required contractors performing work on a project of public works or a publicly funded private construction project that is subject to the prevailing wage law to submit to DWD on

a monthly basis, in electronic format, certified records indicating the name and trade or occupation of every person performing work that is subject to the prevailing wage law and an accurate record of the number of hours worked by each of those persons and the actual wages paid for those hours worked (payroll records) or, if all persons performing work on the project are covered under a collective bargaining agreement that provides for wage rates that are not less than the prevailing wage rate, to submit to DWD during the first month of the project, in electronic format, copies of all collective bargaining agreements pertaining to the project. This bill eliminates that requirement.

4. ***Inspection of payroll records.*** 2009 Wisconsin Act 28 required DWD to charge a person who requests DWD to inspect a contractor's payroll records for the purpose of ensuring compliance with the prevailing wage law the actual cost of the inspection if the contractor is found to be in compliance with that law and if the request is found to be frivolous. Prior law required DWD to charge that cost if the contractor was found to be in compliance with the prevailing wage law, but did not require the additional finding that the request was frivolous. This bill eliminates that additional finding so that under the bill DWD must charge for the cost of inspecting a contractor's payroll records if the contractor is found to be in compliance with the prevailing wage law, whether or not the request is frivolous.

5. ***Remedies for a violation of the prevailing wage law.*** 2009 Wisconsin Act 28 permitted DWD to order a contractor who failed to pay the prevailing wage rate to pay to any affected employee the amount of unpaid wages due, plus 100 percent of that amount as liquidated damages. Prior law permitted only a court to order that payment and permitted that payment to be ordered only to an employee employed on a local project of public works, not to an employee employed on a state project of public works. This bill eliminates the authority of DWD to order that payment so that under the bill only a court may order that payment and permits that payment to be ordered only to an employee employed on a local project of public works, not to an employee employed on a state project of public works.

Finally, the bill makes changes to certain areas of the prevailing wage law that were not substantially affected by 2009 Wisconsin Act 28. Specifically:

1. ***Statewide concern; uniformity.*** The bill states that the creation, retention, and expansion of jobs in the construction industry in this state is a matter of statewide concern and that the state prevailing wage law advances the creation, retention, and expansion of those jobs, but that the enactment of prevailing wage ordinances or other enactments by local governmental units would be logically inconsistent with, would defeat the purpose of, and would go against the spirit of the state prevailing wage law. Therefore, as an enactment of statewide concern for the purpose of providing a uniform prevailing wage law throughout the state, the bill prohibits local governmental units from enacting prevailing wage ordinances or other enactments and provides that a local prevailing wage ordinance or other enactment that is in effect on the day before the effective date of the bill is void.

2. ***Calculation of prevailing wage rate.*** Under current law, "prevailing wage rate" is defined as the hourly basic rate of pay, plus the hourly contribution for bona fide economic benefits, paid for a majority of the hours worked in a trade or

occupation in an area, except that, if there is no rate at which a majority of those hours is paid, "prevailing wage rate" means the average hourly basic rate of pay, plus the average hourly contribution for bona fide economic benefits, paid for the highest 51 percent of hours worked in a trade or occupation in the area. Current law defines "bona fide economic benefit" as an economic benefit for which an employer makes irrevocable contributions or escrow payments at least quarterly.

This bill defines "prevailing wage rate," when there is no rate at which a majority of the hours worked in a trade or occupation in an area is paid, as the average hourly basic rate of pay, plus the average hourly contribution for bona fide economic benefits, paid for *all* hours worked in a trade or occupation in the area. The bill also deletes the definition of "bona fide economic benefit."

3. *Nonapplicability to small municipalities and residential properties.*

The bill exempts from the prevailing wage law a project of public works contracted by a city, village, or town having a population of less than 10,000 and a project of public works involving the erection, construction, repair, remodeling, or demolition of a residential property containing two dwelling units or less.

4. *Treatment of volunteers, truck drivers, subjourneypersons, and incidental work.* Under current law, the prevailing wage law does not apply to a project of public works in which the labor for the project is provided by unpaid volunteers. This bill provides that the prevailing wage law does not apply to work performed on a project of public works for which the local governmental unit or state agency contracting for the project is not required to compensate any contractor, subcontractor, contractor's or subcontractor's agent, or individual for performing the work.

Under current law, the prevailing wage law does not apply to a truck driver who is regularly employed to pick up or deliver materials or products from a commercial establishment that has a fixed place of business from which the establishment regularly supplies processed or manufactured materials or products unless: 1) the truck driver is employed to pick up mineral aggregate from its source and deliver that aggregate to the site of a project of public works; or 2) the truck driver is employed to pick up excavated material from the site of such a project and transport that material away from that site. This bill provides that the prevailing wage law does not apply to a truck driver who is employed to pick up and deliver mineral aggregate to the site of a project of public works or to pick up and transport excavated material away from such a site.

The bill also permits a contractor, subcontractor, or contractor's or subcontractor's agent to employ a subjourneyperson on any project that is subject to the prevailing wage law. The bill defines a "subjourneyperson" as a worker, other than an apprentice, laborer, heavy equipment operator, or truck driver, who primarily works under the direction of, and who assists, a skilled trade employee by frequently using the tools of a specific trade.

Finally, the bill permits a contractor performing work on a project to which the prevailing wage law applies to employ a worker in incidental work outside of the worker's usual trade or occupation for not more than 25 percent of the hours worked by the worker in a workweek.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

✓
1 **SECTION 1.** 19.36 (12) of the statutes is amended to read:

2 **19.36 (12) INFORMATION RELATING TO CERTAIN EMPLOYEES.** Unless access is
3 specifically authorized or required by statute, an authority shall not provide access
4 to a record prepared or provided by an employer performing work on a project to
5 which s. 66.0903, ~~66.0904~~✓, 103.49, or 103.50 applies, or on which the employer is
6 otherwise required to pay prevailing wages, if that record contains the name or other
7 personally identifiable information relating to an employee of that employer, unless
8 the employee authorizes the authority to provide access to that information. In this
9 subsection, “personally identifiable information” does not include an employee’s
10 work classification, hours of work, or wage or benefit payments received for work on
11 such a project.

12 **SECTION 2.** ~~66.0903~~✓ (1) (am) of the statutes is repealed.

13 **SECTION 3.** 66.0903 (1) (d) of the statutes is amended to read:

14 **66.0903 (1) (d)** “Local governmental unit” means a political subdivision of this
15 state, a special purpose district in this state, an instrumentality or corporation of
16 such a political subdivision or special purpose district, a combination or subunit of
17 any of the foregoing or an instrumentality of the state and any of the foregoing.
18 “Local governmental unit” includes a regional transit authority created under s.
19 66.1039 and the southeastern regional transit authority created under s. 59.58 (7).

1 “Local governmental unit” does not include a city, village, or town having a
2 population of less than 10,000.

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60; 2009 a. 28, 276.

3 **SECTION 4.** 66.0903 (1) (dr) of the statutes is amended to read:

4 66.0903 (1) (dr) “Minor service or maintenance work” means a project of public
5 works that is limited to minor crack filling, chip or slurry sealing, or other minor
6 pavement patching, not including overlays, ~~that has a projected life span of no longer~~
7 ~~than 5 years~~; the depositing of gravel on an existing gravel road applied solely to
8 maintain the road; road shoulder maintenance; cleaning of drainage or sewer ditches
9 or structures; or any other limited, minor work on public facilities or equipment that
10 is routinely performed to prevent breakdown or deterioration.

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60; 2009 a. 28, 276.

11 **SECTION 5.** 66.0903 (1) (em) of the statutes is created to read:

12 66.0903 (1) (em) “Multiple-trade project of public works” has the meaning
13 given in s. 103.49 (1) (br).

14 **SECTION 6.** 66.0903 (1) (g) 2. of the statutes is amended to read:

15 66.0903 (1) (g) 2. If there is no rate at which a majority of the hours worked in
16 the trade or occupation on projects in the area is paid, “prevailing wage rate” for any
17 trade or occupation engaged in the erection, construction, remodeling, repairing or
18 demolition of any project of public works in any area means the average hourly basic
19 rate of pay, weighted by the number of hours worked, plus the average hourly
20 contribution, weighted by the number of hours worked, for health insurance benefits,
21 vacation benefits, pension benefits and any other bona fide economic benefit, paid
22 directly or indirectly for all hours worked ~~at the hourly basic rate of pay of the~~

1 highest-paid 51% of hours worked in that trade or occupation on projects in that
2 area.

3 SECTION 7. 66.0903 (1) (hm) of the statutes is created to read:

4 66.0903 (1) (hm) "Single-trade project of public works" has the meaning given
5 in s. 103.49 (1) (em).

6 SECTION 8. 66.0903 (1m) of the statutes is created to read:

7 66.0903 (STATEWIDE CONCERN; UNIFORMITY) (1m) (a) In this subsection, "publicly
8 funded private construction project" means a construction project in which the
9 developer, investor, or owner of the project receives direct financial assistance from
10 a local governmental unit for the erection, construction, repair, remodeling,
11 demolition, including any alteration, painting, decorating, or grading, of a private
12 facility, including land, a building, or other infrastructure. "Publicly funded private
13 construction project" does not include a project of public works or a housing project
14 involving the erection, construction, repair, remodeling, or demolition of any of the
15 following:

16 1. A residential property, if the project is supported by affordable housing
17 grants, home improvement grants, or grants from a local housing trust fund.

18 2. A residential property containing 4 dwelling units or less.

19 3. A residential property that contains retail, office, or commercial components,
20 if the project is intended to increase the supply of affordable housing in a community.

21 (b) 1. The legislature finds that the creation, retention, and expansion of jobs
22 in the construction industry in this state is a matter of statewide concern and that
23 this section and the repeal of s. 66.0904, 2009 stats., which required laborers,
24 workers, mechanics, and truck drivers employed on publicly funded private
25 construction projects to be paid the prevailing wage rate and to be paid at least 1.5

1 times their hourly basic rate of pay for hours worked in excess of the prevailing hours
2 of labor, advances the creation, retention, and expansion of those jobs.

3 2. The legislature further finds, however, that the enactment of ordinances or
4 other enactments by local governmental units requiring laborers, workers,
5 mechanics, and truck drivers employed on projects of public works or on publicly
6 funded private construction projects to be paid the prevailing wage rate and to be
7 paid at least 1.5 times their hourly basic rate of pay for hours worked in excess of the
8 prevailing hours of labor would be logically inconsistent with, would defeat the
9 purpose of, and would go against the spirit of this section[✓] and the repeal of s. 66.0904,[✓]
10 2009 stats. Therefore, this section shall be construed as an enactment of statewide
11 concern for the purpose of providing uniform prevailing wage rate and prevailing
12 hours of labor requirements throughout the state.

13 (c) A local governmental unit may not enact and administer an ordinance or
14 other enactment requiring laborers, workers, mechanics, and truck drivers
15 employed on projects of public works or on publicly funded private construction
16 projects to be paid the prevailing wage rate and to be paid at least 1.5 times their
17 hourly basic rate of pay for hours worked in excess of the prevailing hours of labor
18 or any similar ordinance or enactment. Any such ordinance or other enactment that
19 is in effect on the day before the effective date of this subsection[✓] [LRB inserts
20 date], is void.

21 ~~X~~
22 **SECTION 9.** 66.0903 (2) (c) of the statutes is renumbered 66.0903 (5) (d) and
23 amended to read:

23 66.0903 (5) (d) A project in which the completed facility is leased, purchased,
24 lease purchased, or otherwise acquired by, or dedicated to, a local governmental unit

1 in lieu of the local governmental unit contracting for the erection, construction,
2 repair, remodeling, or demolition of the facility.

3 **SECTION 10.** 66.0903 (2) (d) of the statutes is renumbered 66.0903 (5) (e).

4 **SECTION 11.** 66.0903 (3) (av) of the statutes is amended to read:

5 66.0903 (3) (av) In determining prevailing wage rates under par. (am) or (ar),
6 the department may not use data from projects that are subject to this section, s.
7 ~~66.0904~~, 103.49, or 103.50, or 40 USC 3142 unless the department determines that
8 there is insufficient wage data in the area to determine those prevailing wage rates,
9 in which case the department may use data from projects that are subject to this
10 section, s. ~~66.0904~~, 103.49, or 103.50, or 40 USC 3142.

11 **SECTION 12.** 66.0903 (3) (dm) of the statutes is amended to read:

12 66.0903 (3) (dm) A reference to the prevailing wage rates determined by the
13 department ~~or a local governmental unit exempted under sub. (6)~~ and to the
14 prevailing hours of labor shall be published in the notice issued for the purpose of
15 securing bids for the project of public works. If any contract or subcontract for a
16 project of public works is entered into, the prevailing wage rates determined by the
17 department ~~or exempted local governmental unit~~ and the prevailing hours of labor
18 shall be physically incorporated into and made a part of the contract or subcontract,
19 except that for a minor subcontract, as determined by the department, the
20 department shall prescribe by rule the method of notifying the minor subcontractor
21 of the prevailing wage rates and prevailing hours of labor applicable to the minor
22 subcontract. The prevailing wage rates and prevailing hours of labor applicable to
23 a contract or subcontract may not be changed during the time that the contract or
24 subcontract is in force. No person performing the work described in sub. (4) may be
25 paid less than the prevailing wage rate in the same or most similar trade or

1 occupation determined under this subsection; nor may he or she be permitted to work
2 a greater number of hours per day or per week than the prevailing hours of labor,
3 unless he or she is paid for all hours worked in excess of the prevailing hours of labor
4 at a rate of at least 1.5 times his or her hourly basic rate of pay.

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60; 2009 a. 28, 276. ✓

5 **SECTION 13.** 66.0903 (4) (b) (intro.) of the statutes is renumbered 66.0903 (4)

6 (b) and amended to read:

7 66.0903 (4) (b) (intro.) ~~Notwithstanding par. (a) 1., a~~ [↓] A laborer, worker,
8 mechanic, or truck driver who is regularly employed to process, manufacture, pick
9 up, or deliver materials or products from a commercial establishment that has a fixed
10 place of business from which the establishment regularly supplies processed or
11 manufactured materials or products is not entitled to receive the prevailing wage
12 rate determined under sub. (3) or to receive at least 1.5 times his or her hourly basic
13 rate of pay for all hours worked in excess of the prevailing hours of labor ~~unless any~~
14 ~~of the following applies:~~

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60; 2009 a. 28, 276. ✓

15 **SECTION 14.** 66.0903 (4) (b) 1. of the statutes is repealed. ✓

16 **SECTION 15.** 66.0903 (4) (b) 2. of the statutes is repealed. ✓

17 **SECTION 16.** 66.0903 (4) (d) of the statutes is created to read: ✓

18 66.0903 (4) (d) 1. In this paragraph, "subjourney[✓]person" means a worker, other
19 than an apprentice, laborer, heavy equipment operator, or truck driver, who
20 primarily works under the direction of, and who assists, a skilled trade employee by
21 frequently using the tools of a specific trade.

22 2. A contractor, subcontractor, or contractor's or subcontractor's agent may
23 employ a subjourney[✓]person on any project to which this section applies.

✓
1 **SECTION 17.** 66.0903 (4) (e) of the statutes is created to read:

2 66.0903 (4) (e) In performing work on a project to which this section ✓
3 a contractor, subcontractor, or contractor's or subcontractor's agent may employ a
4 laborer, worker, mechanic, or truck driver in incidental ✓
5 individual's usual trade or occupation for not more than 25 percent of the hours
6 worked by that individual in a workweek.

7 **SECTION 18.** 66.0903 (5) (a) of the statutes ✓ is amended to read:

8 66.0903 (5) (a) A single-trade project of public works for which the estimated
9 project cost of completion is below \$25,000 ✓ less than \$50,000 or a multiple-trade
10 project of public works for which the estimated project cost of completion is less than
11 \$250,000. ✓

12 **SECTION 19.** 66.0903 (5) (b) of the statutes ✓ is amended to read:

13 66.0903 (5) (b) ~~A~~ Work performed on a project of public works in which the
14 labor for the project is provided by unpaid volunteers for which the local
15 governmental unit contracting for the project is not required to compensate any
16 contractor, subcontractor, contractor's or subcontractor's agent, or individual for
17 performing the work. ✓

18 **SECTION 20.** 66.0903 (5) (f) of the statutes is created to read:

19 66.0903 (5) (f) A project of public works involving the erection, ✓ construction,
20 repair, remodeling, or demolition of a residential property containing 2 ✓ dwelling
21 units or less.

22 **SECTION 21.** 66.0903 (8) of the statutes ✓ is amended to read:

23 66.0903 (8) POSTING. For the information of the employees working on the
24 project of public works, the prevailing wage rates determined by the department or
25 ~~exempted local governmental unit,~~ the prevailing hours of labor, and the provisions

1 of subs. (10) (a) and (11) (a) shall be kept posted by the local governmental unit in at
2 least one conspicuous and easily accessible place on the site of the project or, if there
3 is no common site on the project, at the place normally used by the local
4 governmental unit to post public notices.

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60; 2009 a. 28, 276.

5 **SECTION 22.** 66.0903 (10) (am) of the statutes^x is repealed.

6 **SECTION 23.** 66.0903 (10) (c) of the statutes[✓] is amended to read:

7 66.0903 (10) (c) If requested by any person, the department shall inspect the
8 payroll records of any contractor, subcontractor, or agent performing work on a
9 project of public works that is subject to this section to ensure compliance with this
10 section. In the case of a request made by a person performing the work specified in
11 sub. (4), if the department finds that the contractor, subcontractor, or agent subject
12 to the inspection is in compliance and that the request is frivolous[✓], the department
13 shall charge the person making the request the actual cost of the inspection. In the
14 case of a request made by a person not performing the work specified in sub. (4), if
15 the department finds that the contractor, subcontractor, or agent subject to the
16 inspection is in compliance and that the request is frivolous[✓], the department shall
17 charge the person making the request \$250 or the actual cost of the inspection,
18 whichever is greater. In order to find that a request is frivolous[✓], the department must
19 find that the person making the request made the request in bad faith, solely for the
20 purpose of harassing or maliciously injuring the contractor, subcontractor, or agent
21 subject to the inspection, or that the person making the request knew, or should have
22 known, that there was no reasonable basis for believing that a violation of this
23 section had been committed.

1 **SECTION 24.** 66.0903 (11) (a) 1., 3. and 5. of the statutes are consolidated,
2 renumbered 66.0903 (11) (a) and amended to read:

3 66.0903 (11) (a) Any contractor, subcontractor, or contractor's or
4 subcontractor's agent who fails to pay the prevailing wage rate determined by the
5 department under sub. (3) or who pays less than 1.5 times the hourly basic rate of
6 pay for all hours worked in excess of the prevailing hours of labor is liable to any
7 affected employee in the amount of his or her unpaid wages or his or her unpaid
8 overtime compensation and in an additional equal amount as liquidated damages as
9 provided under subd. 2., 3., [✓] ~~whichever is applicable.~~ 3. [✓] ~~In addition to or in lieu of~~
10 ~~recovering the liability specified in subd. 1. as provided in subd. 2., any.~~ [✓] An action
11 to recover the liability may be maintained in any court of competent jurisdiction by
12 any employee for and in behalf of that employee and other employees similarly
13 situated may commence an action to recover that liability in any court of competent
14 jurisdiction. If the court finds that a contractor, subcontractor, or contractor's or
15 subcontractor's agent has failed to pay the prevailing wage rate determined by the
16 department under sub. (3) or has paid less than 1.5 times the hourly basic rate of pay
17 for all hours worked in excess of the prevailing hours of labor, the court shall order
18 the contractor, subcontractor, or agent to pay to any affected employee the amount
19 of his or her unpaid wages or his or her unpaid overtime compensation and an
20 additional amount equal to 100 percent of the amount of those unpaid wages or that
21 unpaid overtime compensation as liquidated damages. 5. [✓] No employee may be a
22 party plaintiff to ~~an~~ [✓] the action under subd. 3. unless the employee consents in writing
23 to become a party and the consent is filed in the court in which the action is brought.
24 Notwithstanding s. 814.04 (1), the court shall, in addition to any judgment awarded
25 to the plaintiff, allow reasonable attorney fees and costs to be paid by the defendant.

1 **SECTION 25.** 66.0903 (11) (a) 2. of the statutes is repealed.

2 **SECTION 26.** 66.0903 (12) (a) of the statutes is amended to read:

3 66.0903 (12) (a) Except as provided under pars. (b) and (c), the department
4 shall notify any local governmental unit applying for a determination under sub. (3)
5 and any local governmental unit exempted under sub. (6) of the names of all persons
6 whom the department has found to have failed to pay the prevailing wage rate
7 determined under sub. (3) or has found to have paid less than 1.5 times the hourly
8 basic rate of pay for all hours worked in excess of the prevailing hours of labor at any
9 time in the preceding 3 years. The department shall include with each name the
10 address of the person and shall specify when the person failed to pay the prevailing
11 wage rate and when the person paid less than 1.5 times the hourly basic rate of pay
12 for all hours worked in excess of the prevailing hours of labor. A local governmental
13 unit may not award any contract to the person unless otherwise recommended by the
14 department or unless 3 years have elapsed from the date the department issued its
15 findings or the date of final determination by a court of competent jurisdiction,
16 whichever is later.

History: 1971 c. 154, 307; 1973 c. 181; 1977 c. 29; 1985 a. 159; 1989 a. 56, 228; 1991 a. 316; 1993 a. 112, 399; 1995 a. 27 ss. 3318, 3319, 9130 (4); 1995 a. 215; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 s. 335; Stats. 1999 s. 66.0903; 1999 a. 186 ss. 51 to 60; 2009 a. 28, 276.

17 **SECTION 27.** 66.0904 of the statutes is repealed.

18 **SECTION 28.** 103.49 (1) (am) of the statutes is repealed.

19 **SECTION 29.** 103.49 (1) (bj) of the statutes is amended to read:

20 103.49 (1) (bj) "Minor service or maintenance work" means a project of public
21 works that is limited to minor crack filling, chip or slurry sealing, or other minor
22 pavement patching, not including overlays, that has a projected life span of no longer
23 than 5 years; the depositing of gravel on an existing gravel road applied solely to
24 maintain the road; road shoulder maintenance; cleaning of drainage or sewer ditches

1 or structures; or any other limited, minor work on public facilities or equipment that
2 is routinely performed to prevent breakdown or deterioration.

History: 1983 a. 27; 1985 a. 159; 1985 a. 332 ss. 141, 142, 253; 1987 a. 403 s. 256; 1989 a. 228; 1993 a. 112; 1995 a. 27, 215, 225; 1997 a. 35; 1999 a. 70; 1999 a. 150 ss. 628, 672; 1999 a. 167; 2001 a. 16, 30; 2005 a. 335; 2009 a. 28, 276.

3 **SECTION 30.** 103.49 (1) (br) of the statutes is created to read:

4 103.49 (1) (br) "Multiple-trade project of public works" means a project of
5 public works in which no single trade accounts for 85 percent or more of the total
6 labor cost of the project.

7 **SECTION 31.** 103.49 (1) (d) 2. of the statutes is amended to read:

8 103.49 (1) (d) 2. If there is no rate at which a majority of the hours worked in
9 the trade or occupation on projects in the area is paid, "prevailing wage rate" for any
10 trade or occupation engaged in the erection, construction, remodeling, repairing or
11 demolition of any project of public works in any area means the average hourly basic
12 rate of pay, weighted by the number of hours worked, plus the average hourly
13 contribution, weighted by the number of hours worked, for health insurance benefits,
14 vacation benefits, pension benefits and any other bona fide economic benefit, paid
15 directly or indirectly for all hours worked ~~at the hourly basic rate of pay of the~~
16 ~~highest-paid 51% of hours worked~~ in that trade or occupation on projects in that
17 area.

18 **SECTION 32.** 103.49 (1) (em) of the statutes is created to read:

19 103.49 (1) (em) "Single-trade project of public works" means a project of public
20 works in which a single trade accounts for 85 percent or more of the total labor cost
21 of the project.

22 **SECTION 33.** 103.49 (1m) (intro.) and (a) of the statutes are consolidated,
23 renumbered 103.49 (1m) and amended to read:

103.49 (1m) APPLICABILITY. Subject to sub. (3g), this section applies to any project of public works erected, constructed, repaired, remodeled, or demolished for the state or a state agency, ~~other than a highway, street, or bridge construction or maintenance project~~, including all of the following: (a) ~~A~~ [✓] a project erected, constructed, repaired, remodeled, or demolished by one state agency for another state agency under any contract or under any statute specifically authorizing cooperation between state agencies.

~~SECTION 34.~~ 103.49 (1m) (b) of the statutes is renumbered 103.49 (3g) (d) and amended to read:

103.49 (3g) (d) A project in which the completed facility is leased, purchased, lease purchased, or otherwise acquired by, or dedicated to, the state in lieu of the state or a state agency contracting for the erection, construction, repair, remodeling, or demolition of the facility.

~~SECTION 35.~~ 103.49 (1m) (c) of the statutes is renumbered 103.49 (3g) (e) and amended to read:

103.49 (3g) (e) A ^b“sanitary sewer” road, street, bridge, sanitary sewer, or water main project in which the completed road, street, bridge, sanitary sewer, or water main is acquired by, or dedicated to, the state for ownership or maintenance by the state.

~~SECTION 36.~~ 103.49 (2m) (b) (intro.) of the statutes is renumbered 103.49 (2m) (b) and amended to read:

103.49 (2m) (b) (intro.) ~~Notwithstanding par. (a) 1.,~~ [✓] ~~a~~ [↓] A laborer, worker, mechanic, or truck driver who is regularly employed to process, manufacture, pick up, or deliver materials or products from a commercial establishment that has a fixed place of business from which the establishment regularly supplies processed or

1 manufactured materials or products is not entitled to receive the prevailing wage
2 rate determined under sub. (3) or to receive at least 1.5 times his or her hourly basic
3 rate of pay for all hours worked in excess of the prevailing hours of labor ~~unless any~~
4 ~~of the following applies:~~

History: 1983 a. 27; 1985 a. 159; 1985 a. 332 ss. 141, 142, 253; 1987 a. 403 s. 256; 1989 a. 228; 1993 a. 112; 1995 a. 27, 215, 225; 1997 a. 35; 1999 a. 70; 1999 a. 150 ss. 628, 672; 1999 a. 167; 2001 a. 16, 30; 2005 a. 335; 2009 a. 28, 276.

5 **SECTION 37.** 103.49 (2m) (b) 1. of the statutes is repealed.

6 **SECTION 38.** 103.49 (2m) (b) 2. of the statutes is repealed.

7 **SECTION 39.** 103.49 (2m) (d) of the statutes is created to read:

8 103.49 (2m) (d) 1. In this paragraph, "subjourneyperson" means a worker,
9 other than an apprentice, laborer, heavy equipment operator, or truck driver, who
10 primarily works under the direction of, and who assists, a skilled trade employee by
11 frequently using the tools of a specific trade.

12 2. A contractor, subcontractor, or contractor's or subcontractor's agent may
13 employ a subjourneyperson on any project to which this section applies.

14 **SECTION 40.** 103.49 (2m) (e) of the statutes is created to read:

15 103.49 (2m) (e) In performing work on a project to which this section applies,
16 a contractor, subcontractor, or contractor's or subcontractor's agent may employ a
17 laborer, worker, mechanic, or truck driver in incidental work outside of that
18 individual's usual trade or occupation for not more than 25 percent of the hours
19 worked by that individual in a workweek.

20 **SECTION 41.** 103.49 (3) (ar) of the statutes is amended to read:

21 103.49 (3) (ar) In determining prevailing wage rates under par. (a) or (am), the
22 department may not use data from projects that are subject to this section, s. 66.0903,
23 ~~66.0904~~, 103.50, or 229.8275, or 40 USC 3142 unless the department determines that
24 there is insufficient wage data in the area to determine those prevailing wage rates,

1 in which case the department may use data from projects that are subject to this
2 section, s. 66.0903, ~~66.0904~~, 103.50, or 229.8275, or 40 USC 3142.

3 **SECTION 42.** 103.49 (3g) (a) of the statutes is amended to read:

4 103.49 (3g) (a) A single-trade project of public works for which the estimated
5 project cost of completion is less than ~~\$25,000~~ \$50,000 or a multiple-trade project of
6 public works for which the estimated project cost of completion is less than \$250,000.

7 **SECTION 43.** 103.49 (3g) (b) of the statutes is amended to read:

8 103.49 (3g) (b) ~~A Work performed on a project of public works in which the~~
9 ~~labor for the project is provided by unpaid volunteers for which the state or the state~~
10 ~~agency contracting for the project is not required to compensate any contractor,~~
11 ~~subcontractor, contractor's or subcontractor's agent, or individual for performing the~~
12 ~~work.~~

13 **SECTION 44.** 103.49 (3g) (f) of the statutes is created to read:

14 103.49 (3g) (f) A public highway, street, or bridge project.

15 **SECTION 45.** 103.49 (3g) (g) of the statutes is created to read:

16 103.49 (3g) (g) A project of public works involving the erection, construction,
17 repair, remodeling, or demolition of a residential property containing 2 dwelling
18 units or less.

19 **SECTION 46.** 103.49 (5) (am) of the statutes is repealed.

20 **SECTION 47.** 103.49 (5) (c) of the statutes is amended to read:

21 103.49 (5) (c) If requested by any person, the department shall inspect the
22 payroll records of any contractor, subcontractor, or agent performing work on a
23 project of public works that is subject to this section to ensure compliance with this
24 section. In the case of a request made by a person performing the work specified in
25 sub. (2m), if the department finds that the contractor, subcontractor, or agent subject

1 to the inspection is in compliance ~~and that the request is frivolous~~[✓], the department
2 shall charge the person making the request the actual cost of the inspection. In the
3 case of a request made by a person not performing the work specified in sub. (2m),
4 if the department finds that the contractor, subcontractor, or agent subject to the
5 inspection is in compliance ~~and that the request is frivolous~~, the department shall
6 charge the person making the request \$250 or the actual cost of the inspection,
7 whichever is greater. ~~In order to find that a request is frivolous, the department must~~
8 ~~find that the person making the request made the request in bad faith, solely for the~~
9 ~~purpose of harassing or maliciously injuring the contractor, subcontractor, or agent~~
10 ~~subject to the inspection, or that the person making the request knew, or should have~~
11 ~~known, that there was no reasonable basis for believing that a violation of this~~
12 ~~section had been committed.~~

13 **SECTION 48.** 103.49 (6m) (ag) of the statutes is repealed.

14 **SECTION 49.** 103.50 (1) (d) 2. of the statutes is amended to read:

15 103.50 (1) (d) 2. If there is no rate at which a majority of the hours worked in
16 the trade or occupation in the area is paid, "prevailing wage rate" means the average
17 hourly basic rate of pay, weighted by the number of hours worked, plus the average
18 hourly contribution, weighted by the number of hours worked, for health insurance
19 benefits, vacation benefits, pension benefits and any other bona fide economic
20 benefit, paid directly or indirectly for all hours worked ~~at the hourly basic rate of pay~~[✓]
21 ~~of the highest-paid 51% of hours worked~~ in that trade or occupation in that area.

22 **SECTION 50.** 103.50 (2m) (b) (intro.) of the statutes is renumbered 103.50 (2m)
23 (b) and amended to read:

24 103.50 (2m) (b) (intro.) Notwithstanding par. (a) 1., ~~a~~[↓] A laborer, worker,
25 mechanic, or truck driver who is regularly employed to process, manufacture, pick

1 up, or deliver materials or products from a commercial establishment that has a fixed
2 place of business from which the establishment regularly supplies processed or
3 manufactured materials or products is not entitled to receive the prevailing wage
4 rate determined under sub. (3) or to receive at least 1.5 times his or her hourly basic
5 rate of pay for all hours worked in excess of the prevailing hours of labor ~~unless any~~
6 ~~of the following applies:~~

History: 1977 c. 29 s. 1654 (8) (c); 1979 c. 269; 1985 a. 332 ss. 143, 144, 253; 1989 a. 228; 1993 a. 492; 1995 a. 215, 225; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 ss. 629, 672; 2001 a. 30; 2009 a. 28.

7 **SECTION 51.** 103.50 (2m) (b) 1. of the statutes is repealed.

8 **SECTION 52.** 103.50 (2m) (b) 2. of the statutes is repealed.

9 **SECTION 53.** 103.50 (4m) of the statutes is amended to read:

10 103.50 (4m) WAGE RATE DATA. In determining prevailing wage rates for projects
11 that are subject to this section, the department shall use data from projects that are
12 subject to this section, s. 66.0903, 66.0904, or 103.49, or 40 USC 3142.

13 **SECTION 54.** 103.503 (title) of the statutes is amended to read:

14 **103.503 (title) Substance abuse prevention on public works and**
15 **publicly funded projects.**

16 **SECTION 55.** 103.503 (1) (a) of the statutes is amended to read:

17 103.503 (1) (a) "Accident" means an incident caused, contributed to, or
18 otherwise involving an employee that resulted or could have resulted in death,
19 personal injury, or property damage and that occurred while the employee was
20 performing the work described in s. 66.0903 (4), 66.0904 (3), or 103.49 (2m) on a
21 project.

22 **SECTION 56.** 103.503 (1) (c) of the statutes is amended to read:

23 103.503 (1) (c) "Contracting agency" means a local governmental unit, as
24 defined in s. 66.0903 (1) (d), or a state agency, as defined in s. 103.49 (1) (f), or an

✓
1 ~~owner or developer under s. 66.0904~~ that has contracted for the performance of work
2 on a project.

3 **SECTION 57.** 103.503 (1) (e) of the statutes is amended to read: ✓

4 103.503 (1) (e) "Employee" means a laborer, worker, mechanic, or truck driver
5 who performs the work described in s. 66.0903 (4), ~~66.0904 (3)~~, or 103.49 (2m) on a
6 project.

7 **SECTION 58.** 103.503 (1) (g) of the statutes is amended to read: ✓

8 103.503 (1) (g) "Project" ~~mean~~^{means} a project of public works that is subject to s.
9 66.0903 or 103.49 or a publicly funded private construction project that is subject to
10 s. ~~66.0904~~.

11 **SECTION 59.** 103.503 (2) of the statutes is amended to read: ✓

12 103.503 (2) SUBSTANCE ABUSE PROHIBITED. No employee may use, possess,
13 attempt to possess, distribute, deliver, or be under the influence of a drug, or use or
14 be under the influence of alcohol, while performing the work described in s. 66.0903
15 (4), ~~66.0904 (3)~~, or 103.49 (2m) on a project. An employee is considered to be under
16 the influence of alcohol for purposes of this subsection if he or she has an alcohol
17 concentration that is equal to or greater than the amount specified in s. 885.235 (1g)
18 (d).

19 **SECTION 60.** 103.503 (3) (a) 2. of the statutes is amended to read: ✓

20 103.503 (3) (a) 2. A requirement that employees performing the work described
21 in s. 66.0903 (4), ~~66.0904 (3)~~, or 103.49 (2m) on a project submit to random,
22 reasonable suspicion, and post-accident drug and alcohol testing and to drug and
23 alcohol testing before commencing work on a project, except that testing of an
24 employee before commencing work on a project is not required if the employee has

1 been participating in a random testing program during the 90 days preceding the
2 date on which the employee commenced work on the project.

3 **SECTION 61.** 104.001 (3) (am) of the statutes [✓]is repealed.

4 **SECTION 62.** 109.09 (1) of the statutes is [✓]amended to read:

5 109.09 (1) The department shall investigate and attempt equitably to adjust
6 controversies between employers and employees as to alleged wage claims. The
7 department may receive and investigate any wage claim which is filed with the
8 department, or received by the department under s. 109.10 (4), no later than 2 years
9 after the date the wages are due. The department may, after receiving a wage claim,
10 investigate any wages due from the employer against whom the claim is filed to any
11 employee during the period commencing 2 years before the date the claim is filed.
12 The department shall enforce this chapter and ss. 66.0903, ~~66.0904~~[✓], 103.02, 103.49,
13 103.82, 104.12, and 229.8275. In pursuance of this duty, the department may sue the
14 employer on behalf of the employee to collect any wage claim or wage deficiency and
15 ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions
16 under s. 109.10, the department may refer such an action to the district attorney of
17 the county in which the violation occurs for prosecution and collection and the
18 district attorney shall commence an action in the circuit court having appropriate
19 jurisdiction. Any number of wage claims or wage deficiencies against the same
20 employer may be joined in a single proceeding, but the court may order separate
21 trials or hearings. In actions that are referred to a district attorney under this
22 subsection, any taxable costs recovered by the district attorney shall be paid into the
23 general fund of the county in which the violation occurs and used by that county to
24 meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office
25 of the district attorney who prosecuted the action.

1 **SECTION 63.** 111.322 (2m) (c) of the statutes[✓] is amended to read:

2 111.322 **(2m)** (c) The individual files a complaint or attempts to enforce a right[✓]
3 under s. 66.0903, ~~66.0904~~[✓], 103.49, or 229.8275 or testifies or assists in any action or[✓]
4 proceeding under s. 66.0903, ~~66.0904~~[✓], 103.49, or 229.8275.

5 **SECTION 64.** 227.01 (13) (t) of the statutes[✓] is amended to read:

6 227.01 **(13)** (t) Ascertains and determines prevailing wage rates under ss.
7 66.0903, ~~66.0904~~[✓], 103.49, 103.50, and 229.8275, except that any action or inaction
8 which ascertains and determines prevailing wage rates under ss. 66.0903, ~~66.0904~~[✓],
9 103.49, 103.50, and 229.8275 is subject to judicial review under s. 227.40.

10 **SECTION 65.** 946.15 (title) of the statutes[✓] is amended to read:

11 **946.15** (title) **Public and publicly funded construction contracts at less**[✓]
12 **than full rate.**

13 **SECTION 66.** 946.15 (1) of the statutes[✓] is amended to read:

14 946.15 **(1)** Any employer, or any agent or employee of an employer, who induces
15 any person who seeks to be or is employed pursuant to a public contract as defined
16 in s. 66.0901 (1) (c) or who seeks to be or is employed on a project on which a prevailing
17 wage rate determination has been issued by the department of workforce
18 development under s. 66.0903 (3), ~~66.0904 (4)~~[✓], 103.49 (3), 103.50 (3), or 229.8275 (3)
19 or by a local governmental unit[✓], as defined in s. 66.0903 (1) (d), under s. ~~66.0903 (6)~~[✓]
20 or ~~66.0904 (6)~~[✓] to give up, waive, or return any part of the compensation to which that
21 person is entitled under his or her contract of employment or under the prevailing
22 wage rate determination issued by the department or local governmental unit, or
23 who reduces the hourly basic rate of pay normally paid to an employee for work on
24 a project on which a prevailing wage rate determination has not been issued under
25 s. 66.0903 (3) or ~~(6)~~[✓], ~~66.0904 (4) or (6)~~[✓], 103.49 (3), 103.50 (3), or 229.8275 (3) during

1 a week in which the employee works both on a project on which a prevailing wage
2 rate determination has been issued and on a project on which a prevailing wage rate
3 determination has not been issued, is guilty of a Class I felony.

4 **SECTION 67.** 946.15 (2) of the statutes[✓] is amended to read:

5 946.15 (2) Any person employed pursuant to a public contract as defined in s.
6 66.0901 (1) (c) or employed on a project on which a prevailing wage rate
7 determination has been issued by the department of workforce development under
8 s. 66.0903 (3), ~~66.0904 (4)~~, 103.49 (3), 103.50 (3), or 229.8275 (3) ~~or by a local~~
9 ~~governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) or 66.0904~~
10 ~~(6)~~ who gives up, waives, or returns to the employer or agent of the employer any part
11 of the compensation to which the employee is entitled under his or her contract of
12 employment or under the prevailing wage determination issued by the department
13 ~~or local governmental unit~~, or who gives up any part of the compensation to which
14 he or she is normally entitled for work on a project on which a prevailing wage rate
15 determination has not been issued under s. 66.0903 (3) ~~or (6)~~, ~~66.0904 (4) or (6)~~,
16 103.49 (3), 103.50 (3), or 229.8275 (3) during a week in which the person works
17 part-time on a project on which a prevailing wage rate determination has been
18 issued and part-time on a project on which a prevailing wage rate determination has
19 not been issued, is guilty of a Class C misdemeanor.

20 **SECTION 68.** 946.15 (3) of the statutes[✓] is amended to read:

21 946.15 (3) Any employer or labor organization, or any agent or employee of an
22 employer or labor organization, who induces any person who seeks to be or is
23 employed on a project on which a prevailing wage rate determination has been issued
24 by the department of workforce development under s. 66.0903 (3), ~~66.0904 (4)~~, 103.49[✓]
25 (3), 103.50 (3), or 229.8275 (3) ~~or by a local governmental unit, as defined in s. 66.0903~~

(1) (d), under s. 66.0903 (6) or 66.0904 (6) to permit any part of the wages to which that person is entitled under the prevailing wage rate determination issued by the department or local governmental unit to be deducted from the person's pay is guilty of a Class I felony, unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 3142.

SECTION 69. 946.15 (4) of the statutes is amended to read:

946.15 (4) Any person employed on a project on which a prevailing wage rate determination has been issued by the department of workforce development under s. 66.0903 (3), 66.0904 (4), 103.49 (3), 103.50 (3), or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) or 66.0904 (6) who permits any part of the wages to which that person is entitled under the prevailing wage rate determination issued by the department or local governmental unit to be deducted from his or her pay is guilty of a Class C misdemeanor, unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 3142.

SECTION 70. Initial applicability.

(1) PREVAILING WAGES AND HOURS ON PUBLICLY FUNDED PRIVATE PROJECTS. The treatment of sections 19.36 (12), 66.0903 (3) (av), 66.0904, 103.49 (3) (ar), 103.50 (4m), 103.503 (title), (1) (a), (c), (e), and (g), (2), and (3) (a) 2., 104.001 (3) (am), 109.09 (1), 111.322 (2m) (c), 227.01 (13) (t), and 946.15 (title), (1), (2), (3), and (4) of the statutes first applies to a project proposal, including a preliminary plat or final plat under chapter 236 of the statutes, for a publicly funded private construction project, as defined in section 66.0904 (1) (i), 2009 stats., submitted to a local governmental unit for approval on the effective date of this subsection.

(2) PREVAILING WAGE RATE. The treatment of sections 66.0903 (1) (g) 2., 103.49 (1) (d) 2., and 103.50 (1) (d) 2. of the statutes first applies to a prevailing wage determination made on the effective date of this subsection.

(3) SUBJOURNEYPERSONS, TRUCK DRIVERS, VOLUNTEERS, AND INCIDENTAL WORK. The treatment of sections 66.0903 (4) (b) (intro.), 1., and 2., (d), and (e) and (5) (b), 103.49 (2m) (b) (intro.), 1., and 2., (d), and (e) and (3g) (b), and 103.50 (2m) (b) (intro.), 1., and 2. of the statutes first applies to work performed on the effective date of this subsection, except that, if that work is performed under a contract that contains provisions that are inconsistent with those sections, the treatment of those sections first applies to work performed on the day on which that contract expires or is extended, modified, or renewed, whichever occurs first.

(4) INSPECTION OF PAYROLL RECORDS. The treatment of sections 66.0903 (10) (c) and 103.49 (5) (c) of the statutes first applies to requests for the inspection of payroll records made on the effective date of this subsection.

(5) PREVAILING WAGE RECORDS. The treatment of sections 66.0903 (10) (am) and 103.49 (5) (am) of the statutes first applies to work performed on the effective date of this subsection, except that, if that work is performed under a contract that contains provisions that are inconsistent with those sections, the treatment of those sections first applies to work performed on the day on which that contract expires or is extended, modified, or renewed.

(6) PREVAILING WAGE; REMEDIES. The treatment of sections 66.0903 (11) (a) 1., 2., 3., and 5. and 103.49 (6m) (ag) of the statutes first applies to hours worked on the effective date of this subsection.

(7) TURNKEY, PRIVATE DEVELOPMENT, AND RESIDENTIAL PROJECTS. The treatment of sections 66.0903 (2) (c) and (d) and (5) (f) and 103.49 (1m) (b) and (c) and (3g) (g)

1 of the statutes first applies to a contract for the erection, construction, remodeling,
2 repair, or demolition of a project entered into, or extended, modified, or renewed, on
3 the effective date of this subsection. ✓

4 (END)

S/20

Nathan

① State wide concern - delete (1m) (1b) 1.

i.e., prevailing wage does not advance job creation

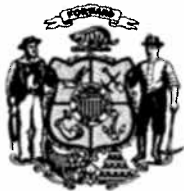
so just say local ordinances conflict w/ state prev. wage law

② IN APP -

First applies:

- publicly funded private projects - proposals accepted on off date

- inspection - records for projects contracted for on off date



State of Wisconsin
2011 - 2012 LEGISLATURE

IN 5120

Monday AM

2011 BILL



LRB-2069/1
GMM:kjf:md

6
RMR

Regen

1 AN ACT *to repeal* 66.0903 (1) (am), 66.0903 (4) (b) 1., 66.0903 (4) (b) 2., 66.0903
2 (10) (am), 66.0903 (11) (a) 2., 66.0904, 103.49 (1) (am), 103.49 (2m) (b) 1., 103.49
3 (2m) (b) 2., 103.49 (5) (am), 103.49 (6m) (ag), 103.50 (2m) (b) 1., 103.50 (2m) (b)
4 2. and 104.001 (3) (am); *to renumber* 66.0903 (2) (d); *to renumber and*
5 *amend* 66.0903 (2) (c), 66.0903 (4) (b) (intro.), 103.49 (1m) (b), 103.49 (1m) (c),
6 103.49 (2m) (b) (intro.) and 103.50 (2m) (b) (intro.); *to consolidate, renumber*
7 *and amend* 66.0903 (11) (a) 1., 3. and 5. and 103.49 (1m) (intro.) and (a); *to*
8 *amend* 19.36 (12), 66.0903 (1) (d), 66.0903 (1) (dr), 66.0903 (1) (g) 2., 66.0903
9 (3) (av), 66.0903 (3) (dm), 66.0903 (5) (a), 66.0903 (5) (b), 66.0903 (8), 66.0903
10 (10) (c), 66.0903 (12) (a), 103.49 (1) (bj), 103.49 (1) (d) 2., 103.49 (3) (ar), 103.49
11 (3g) (a), 103.49 (3g) (b), 103.49 (5) (c), 103.50 (1) (d) 2., 103.50 (4m), 103.503
12 (title), 103.503 (1) (a), 103.503 (1) (c), 103.503 (1) (e), 103.503 (1) (g), 103.503 (2),
13 103.503 (3) (a) 2., 109.09 (1), 111.322 (2m) (c), 227.01 (13) (t), 946.15 (title),
14 946.15 (1), 946.15 (2), 946.15 (3) and 946.15 (4); and *to create* 66.0903 (1) (em),

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66.0903 (1) (hm), 66.0903 (1m), 66.0903 (4) (d), 66.0903 (4) (e), 66.0903 (5) (f),
103.49 (1) (br), 103.49 (1) (em), 103.49 (2m) (d), 103.49 (2m) (e), 103.49 (3g) (f)
and 103.49 (3g) (g) of the statutes; **relating to:** applicability of the prevailing
wage law; the thresholds for applicability of that law; calculation of the
prevailing wage rate; the treatment of volunteers, truck drivers,
subjourneypersons, and incidental work under that law; the submission to the
Department of Workforce Development of payroll records of persons performing
work that is subject to that law; the inspection of those records; and the
remedies for a violation of that law.

Analysis by the Legislative Reference Bureau

Under the current prevailing wage law, certain laborers, workers, mechanics, and truck drivers employed on a state or local project of public works must be paid at the rate paid for a majority of the hours worked in the person's trade or occupation in the county in which the project is located, as determined by the Department of Workforce Development (DWD), and may not be required or permitted to work a greater number of hours per day and per week than the prevailing hours of labor, that is, no more than ten hours per day and 40 hours per week, unless they are paid 1.5 times their basic rate of pay (overtime pay) for all hours worked in excess of the prevailing hours of labor.

2009 Wisconsin Act 28 made various changes to the prevailing wage law, including: 1) expanding the applicability of that law to cover publicly funded private construction projects and certain projects acquired by, or dedicated to, a local governmental unit or the state; 2) lowering the threshold for applicability of that law to a project of public works; 3) requiring contractors to submit payroll records to DWD; 4) requiring DWD to charge a requester for the cost of inspecting payroll records only if the request is frivolous; and 5) permitting DWD to order back pay and liquidated damages for a violation of that law. This bill alters or eliminates those changes. The bill also makes certain changes relating to: 1) statewide uniformity of the prevailing wage law; 2) calculation of the prevailing wage rate; 3) nonapplicability of the prevailing wage law to small municipalities and small residential projects; and 4) the treatment of volunteers, truck drivers, subjourneypersons, and incidental work under the prevailing wage law.

Specifically, with respect to altering or eliminating changes made by 2009 Wisconsin Act 28:

1. Publicly funded private construction projects, turnkey projects, and acquired or dedicated projects. 2009 Wisconsin Act 28 expanded the

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applicability of the prevailing wage law to cover publicly funded private construction projects that receive \$1,000,000 or more in direct financial assistance from a local governmental unit. Under prior law, only projects of public works contracted for by the state or a local governmental unit were subject to the prevailing wage law. This bill eliminates coverage of publicly funded private construction projects under the prevailing wage law, so that under the bill only projects of public works are covered under the prevailing wage law.

2009 Wisconsin Act 28 specified that the prevailing wage law applies to: 1) a project in which the completed facility is leased, lease purchased, or otherwise acquired by, or dedicated to, a local governmental unit or the state in lieu of the local governmental unit or the state contracting for the erection, construction, repair, remodeling, or demolition of the facility (turnkey project); and 2) a road, street, bridge, sanitary sewer, or water main project in which the completed road, street, bridge, sanitary sewer, or water main is acquired by, or dedicated to, a local governmental unit or the state, for ownership or maintenance by the local governmental unit or the state (acquired or dedicated project). This bill specifies that the prevailing wage law does *not* apply to a turnkey project or to an acquired or dedicated project.

2. *Threshold for applicability to public works projects.* 2009 Wisconsin Act 28 lowered the threshold for applicability of the prevailing wage law to a project of public works so that a project of public works for which the estimated project cost of completion is below \$25,000 is not subject to that law. The act also eliminated the authority of DWD to adjust that threshold based on changes in construction costs. Under prior law, that threshold was \$234,000 for a multiple-trade project of public works and \$48,000 for a single-trade project of public works and DWD was authorized to adjust those amounts annually based on changes on construction costs.

This bill sets the threshold for applicability of the prevailing wage law to a single-trade project of public works at an estimated project cost of completion of \$50,000 and the threshold for applicability of that law to a multiple-trade project of public works at an estimated project cost of completion of \$250,000. The bill, however, does not restore the authority of DWD to adjust those thresholds.

3. *Submission of payroll records.* 2009 Wisconsin Act 28 required contractors performing work on a project of public works or a publicly funded private construction project that is subject to the prevailing wage law to submit to DWD on a monthly basis, in electronic format, certified records indicating the name and trade or occupation of every person performing work that is subject to the prevailing wage law and an accurate record of the number of hours worked by each of those persons and the actual wages paid for those hours worked (payroll records) or, if all persons performing work on the project are covered under a collective bargaining agreement that provides for wage rates that are not less than the prevailing wage rate, to submit to DWD during the first month of the project, in electronic format, copies of all collective bargaining agreements pertaining to the project. This bill eliminates that requirement.

4. *Inspection of payroll records.* 2009 Wisconsin Act 28 required DWD to charge a person who requests DWD to inspect a contractor's payroll records for the

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purpose of ensuring compliance with the prevailing wage law the actual cost of the inspection if the contractor is found to be in compliance with that law and if the request is found to be frivolous. Prior law required DWD to charge that cost if the contractor was found to be in compliance with the prevailing wage law, but did not require the additional finding that the request was frivolous. This bill eliminates that additional finding so that under the bill DWD must charge for the cost of inspecting a contractor's payroll records if the contractor is found to be in compliance with the prevailing wage law, whether or not the request is frivolous.

5. **Remedies for a violation of the prevailing wage law.** 2009 Wisconsin Act 28 permitted DWD to order a contractor who failed to pay the prevailing wage rate to pay to any affected employee the amount of unpaid wages due, plus 100 percent of that amount as liquidated damages. Prior law permitted only a court to order that payment and permitted that payment to be ordered only to an employee employed on a local project of public works, not to an employee employed on a state project of public works. This bill eliminates the authority of DWD to order that payment so that under the bill only a court may order that payment and permits that payment to be ordered only to an employee employed on a local project of public works, not to an employee employed on a state project of public works.

Finally, the bill makes changes to certain areas of the prevailing wage law that were not substantially affected by 2009 Wisconsin Act 28. Specifically:

1. **Statewide concern; uniformity.** The bill states that ~~the creation, retention, and expansion of jobs in the construction industry in this state is a matter of statewide concern and that the state prevailing wage law advances the creation, retention, and expansion of those jobs, but that~~ the enactment of prevailing wage ordinances or other enactments by local governmental units would be logically inconsistent with, would defeat the purpose of, and would go against the spirit of the state prevailing wage law. Therefore, as an enactment of statewide concern for the purpose of providing a uniform prevailing wage law throughout the state, the bill prohibits local governmental units from enacting prevailing wage ordinances or other enactments and provides that a local prevailing wage ordinance or other enactment that is in effect on the day before the effective date of the bill is void.

2. **Calculation of prevailing wage rate.** Under current law, "prevailing wage rate" is defined as the hourly basic rate of pay, plus the hourly contribution for bona fide economic benefits, paid for a majority of the hours worked in a trade or occupation in an area, except that, if there is no rate at which a majority of those hours is paid, "prevailing wage rate" means the average hourly basic rate of pay, plus the average hourly contribution for bona fide economic benefits, paid for the highest 51 percent of hours worked in a trade or occupation in the area. Current law defines "bona fide economic benefit" as an economic benefit for which an employer makes irrevocable contributions or escrow payments at least quarterly.

This bill defines "prevailing wage rate," when there is no rate at which a majority of the hours worked in a trade or occupation in an area is paid, as the average hourly basic rate of pay, plus the average hourly contribution for bona fide economic benefits, paid for *all* hours worked in a trade or occupation in the area. The bill also deletes the definition of "bona fide economic benefit."

BILL**3. *Nonapplicability to small municipalities and residential properties.***

The bill exempts from the prevailing wage law a project of public works contracted by a city, village, or town having a population of less than 10,000 and a project of public works involving the erection, construction, repair, remodeling, or demolition of a residential property containing two dwelling units or less.

4. *Treatment of volunteers, truck drivers, subjourneypersons, and incidental work.* Under current law, the prevailing wage law does not apply to a project of public works in which the labor for the project is provided by unpaid volunteers. This bill provides that the prevailing wage law does not apply to work performed on a project of public works for which the local governmental unit or state agency contracting for the project is not required to compensate any contractor, subcontractor, contractor's or subcontractor's agent, or individual for performing the work.

Under current law, the prevailing wage law does not apply to a truck driver who is regularly employed to pick up or deliver materials or products from a commercial establishment that has a fixed place of business from which the establishment regularly supplies processed or manufactured materials or products unless: 1) the truck driver is employed to pick up mineral aggregate from its source and deliver that aggregate to the site of a project of public works; or 2) the truck driver is employed to pick up excavated material from the site of such a project and transport that material away from that site. This bill provides that the prevailing wage law does not apply to a truck driver who is employed to pick up and deliver mineral aggregate to the site of a project of public works or to pick up and transport excavated material away from such a site.

The bill also permits a contractor, subcontractor, or contractor's or subcontractor's agent to employ a subjourneyperson on any project that is subject to the prevailing wage law. The bill defines a "subjourneyperson" as a worker, other than an apprentice, laborer, heavy equipment operator, or truck driver, who primarily works under the direction of, and who assists, a skilled trade employee by frequently using the tools of a specific trade.

Finally, the bill permits a contractor performing work on a project to which the prevailing wage law applies to employ a worker in incidental work outside of the worker's usual trade or occupation for not more than 25 percent of the hours worked by the worker in a workweek.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 19.36 (12) of the statutes is [✓]amended to read:
- 2 19.36 (12) INFORMATION RELATING TO CERTAIN EMPLOYEES. Unless access is
- 3 specifically authorized or required by statute, an authority shall not provide access

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1 to a record prepared or provided by an employer performing work on a project to
2 which s. 66.0903, ~~66.0904~~, 103.49, or 103.50 applies, or on which the employer is
3 otherwise required to pay prevailing wages, if that record contains the name or other
4 personally identifiable information relating to an employee of that employer, unless
5 the employee authorizes the authority to provide access to that information. In this
6 subsection, "personally identifiable information" does not include an employee's
7 work classification, hours of work, or wage or benefit payments received for work on
8 such a project.

9 **SECTION 2.** 66.0903 (1) (am) of the statutes is repealed. ✓

10 **SECTION 3.** 66.0903 (1) (d) of the statutes is amended to read: ✓

11 66.0903 (1) (d) "Local governmental unit" means a political subdivision of this
12 state, a special purpose district in this state, an instrumentality or corporation of
13 such a political subdivision or special purpose district, a combination or subunit of
14 any of the foregoing or an instrumentality of the state and any of the foregoing.
15 "Local governmental unit" includes a regional transit authority created under s.
16 66.1039 and the southeastern regional transit authority created under s. 59.58 (7).
17 "Local governmental unit" does not include a city, village, or town having a
18 population of less than 10,000.

19 **SECTION 4.** 66.0903 (1) (dr) of the statutes is amended to read: ✓

20 66.0903 (1) (dr) "Minor service or maintenance work" means a project of public
21 works that is limited to minor crack filling, chip or slurry sealing, or other minor
22 pavement patching, not including overlays, ~~that has a projected life span of no longer~~
23 ~~than 5 years~~; the depositing of gravel on an existing gravel road applied solely to
24 maintain the road; road shoulder maintenance; cleaning of drainage or sewer ditches

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1 or structures; or any other limited, minor work on public facilities or equipment that
2 is routinely performed to prevent breakdown or deterioration.

3 **SECTION 5.** 66.0903 (1) (em) of the statutes[✓] is created to read:

4 66.0903 (1) (em) "Multiple-trade project of public works" has the meaning
5 given in s. 103.49 (1) (br).

6 **SECTION 6.** 66.0903 (1) (g) 2. of the statutes[✓] is amended to read:

7 66.0903 (1) (g) 2. If there is no rate at which a majority of the hours worked in
8 the trade or occupation on projects in the area is paid, "prevailing wage rate" for any
9 trade or occupation engaged in the erection, construction, remodeling, repairing or
10 demolition of any project of public works in any area means the average hourly basic
11 rate of pay, weighted by the number of hours worked, plus the average hourly
12 contribution, weighted by the number of hours worked, for health insurance benefits,
13 vacation benefits, pension benefits and any other bona fide economic benefit, paid
14 directly or indirectly for all hours worked ~~at the hourly basic rate of pay of the~~
15 ~~highest-paid 51% of hours worked~~ in that trade or occupation on projects in that
16 area.

17 **SECTION 7.** 66.0903 (1) (hm) of the statutes[✓] is created to read:

18 66.0903 (1) (hm) "Single-trade project of public works" has the meaning given
19 in s. 103.49 (1) (em).

20 **SECTION 8.** 66.0903 (1m) of the statutes[✓] is created to read:

21 66.0903 (1m) STATEWIDE CONCERN; UNIFORMITY. (a) In this subsection, "publicly
22 funded private construction project" means a construction project in which the
23 developer, investor, or owner of the project receives direct financial assistance from
24 a local governmental unit for the erection, construction, repair, remodeling,
25 demolition, including any alteration, painting, decorating, or grading, of a private

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1 facility, including land, a building, or other infrastructure. "Publicly funded private
2 construction project" does not include a project of public works or a housing project
3 involving the erection, construction, repair, remodeling, or demolition of any of the
4 following:

5 1. A residential property, if the project is supported by affordable housing
6 grants, home improvement grants, or grants from a local housing trust fund.

7 2. A residential property containing 4 dwelling units or less.

8 3. A residential property that contains retail, office, or commercial components,
9 if the project is intended to increase the supply of affordable housing in a community.

10 (b) ~~1. The legislature finds that the creation, retention, and expansion of jobs~~
11 ~~in the construction industry in this state is a matter of statewide concern and that~~
12 ~~this section and the repeal of s. 66.0904, 2009 stats., which required laborers,~~
13 ~~workers, mechanics, and truck drivers employed on publicly funded private~~
14 ~~construction projects to be paid the prevailing wage rate and to be paid at least 1.5~~
15 ~~times their hourly basic rate of pay for hours worked in excess of the prevailing hours~~
16 ~~of labor, advances the creation, retention, and expansion of those jobs.~~

17 ~~2. The legislature further finds, however, that~~ the enactment of ordinances or
18 other enactments by local governmental units requiring laborers, workers,
19 mechanics, and truck drivers employed on projects of public works or on publicly
20 funded private construction projects to be paid the prevailing wage rate and to be
21 paid at least 1.5 times their hourly basic rate of pay for hours worked in excess of the
22 prevailing hours of labor would be logically inconsistent with, would defeat the
23 purpose of, and would go against the spirit of this section and the repeal of s. 66.0904,
24 2009 stats. Therefore, this section shall be construed as an enactment of statewide

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1 concern for the purpose of providing uniform prevailing wage rate and prevailing
2 hours of labor requirements throughout the state.

3 (c) A local governmental unit may not enact and administer an ordinance or
4 other enactment requiring laborers, workers, mechanics, and truck drivers
5 employed on projects of public works or on publicly funded private construction
6 projects to be paid the prevailing wage rate and to be paid at least 1.5 times their
7 hourly basic rate of pay for hours worked in excess of the prevailing hours of labor
8 or any similar ordinance or enactment. Any such ordinance or other enactment that
9 is in effect on the day before the effective date of this subsection [LRB inserts
10 date], is void.

11 **SECTION 9.** 66.0903 (2) (c) of the statutes is renumbered 66.0903 (5) (d) and
12 amended to read:

13 66.0903 (5) (d) A project in which the completed facility is leased, purchased,
14 lease purchased, or otherwise acquired by, or dedicated to, a local governmental unit
15 in lieu of the local governmental unit contracting for the erection, construction,
16 repair, remodeling, or demolition of the facility.

17 **SECTION 10.** 66.0903 (2) (d) of the statutes is renumbered 66.0903 (5) (e).

18 **SECTION 11.** 66.0903 (3) (av) of the statutes is amended to read:

19 66.0903 (3) (av) In determining prevailing wage rates under par. (am) or (ar),
20 the department may not use data from projects that are subject to this section, s.
21 ~~66.0904~~, 103.49, or 103.50, or 40 USC 3142 unless the department determines that
22 there is insufficient wage data in the area to determine those prevailing wage rates,
23 in which case the department may use data from projects that are subject to this
24 section, s. ~~66.0904~~, 103.49, or 103.50, or 40 USC 3142.

25 **SECTION 12.** 66.0903 (3) (dm) of the statutes is amended to read:

BILL**SECTION 12**

1 66.0903 (3) (dm) A reference to the prevailing wage rates determined by the
2 department ~~or a local governmental unit exempted under sub. (6)~~ and to the
3 prevailing hours of labor shall be published in the notice issued for the purpose of
4 securing bids for the project of public works. If any contract or subcontract for a
5 project of public works is entered into, the prevailing wage rates determined by the
6 department ~~or exempted local governmental unit~~ and the prevailing hours of labor
7 shall be physically incorporated into and made a part of the contract or subcontract,
8 except that for a minor subcontract, as determined by the department, the
9 department shall prescribe by rule the method of notifying the minor subcontractor
10 of the prevailing wage rates and prevailing hours of labor applicable to the minor
11 subcontract. The prevailing wage rates and prevailing hours of labor applicable to
12 a contract or subcontract may not be changed during the time that the contract or
13 subcontract is in force. No person performing the work described in sub. (4) may be
14 paid less than the prevailing wage rate in the same or most similar trade or
15 occupation determined under this subsection; nor may he or she be permitted to work
16 a greater number of hours per day or per week than the prevailing hours of labor,
17 unless he or she is paid for all hours worked in excess of the prevailing hours of labor
18 at a rate of at least 1.5 times his or her hourly basic rate of pay.

19 **SECTION 13.** 66.0903 (4) (b) (intro.) of the [✓]statutes is renumbered 66.0903 (4)
20 (b) and amended to read:

21 66.0903 (4) (b) ~~Notwithstanding par. (a) 1., a~~ A laborer, worker, mechanic, or
22 truck driver who is regularly employed to process, manufacture, pick up, or deliver
23 materials or products from a commercial establishment that has a fixed place of
24 business from which the establishment regularly supplies processed or
25 manufactured materials or products is not entitled to receive the prevailing wage

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1 rate determined under sub. (3) or to receive at least 1.5 times his or her hourly basic
2 rate of pay for all hours worked in excess of the prevailing hours of labor ~~unless any~~
3 ~~of the following applies:~~

4 **SECTION 14.** 66.0903 (4) (b) 1. of the statutes is repealed. ✓

5 **SECTION 15.** 66.0903 (4) (b) 2. of the statutes is repealed. ✓

6 **SECTION 16.** 66.0903 (4) (d) of the statutes is created to read: ✓

7 66.0903 (4) (d) 1. In this paragraph, "subjourneyperson" means a worker, other
8 than an apprentice, laborer, heavy equipment operator, or truck driver, who
9 primarily works under the direction of, and who assists, a skilled trade employee by
10 frequently using the tools of a specific trade.

11 2. A contractor, subcontractor, or contractor's or subcontractor's agent may
12 employ a subjourneyperson on any project to which this section applies.

13 **SECTION 17.** 66.0903 (4) (e) of the statutes is created to read: ✓

14 66.0903 (4) (e) In performing work on a project to which this section applies,
15 a contractor, subcontractor, or contractor's or subcontractor's agent may employ a
16 laborer, worker, mechanic, or truck driver in incidental work outside of that
17 individual's usual trade or occupation for not more than 25 percent of the hours
18 worked by that individual in a workweek.

19 **SECTION 18.** 66.0903 (5) (a) of the statutes is amended to read: ✓

20 66.0903 (5) (a) A single-trade project of public works for which the estimated
21 project cost of completion is below \$25,000 less than \$50,000 or a multiple-trade
22 project of public works for which the estimated project cost of completion is less than
23 \$250,000.

24 **SECTION 19.** 66.0903 (5) (b) of the statutes is amended to read: ✓

BILL**SECTION 19**

1 66.0903 (5) (b) ~~A Work performed on a project of public works in which the~~
2 ~~labor for the project is provided by unpaid volunteers for which the local~~
3 ~~governmental unit contracting for the project is not required to compensate any~~
4 ~~contractor, subcontractor, contractor's or subcontractor's agent, or individual for~~
5 ~~performing the work.~~

6 **SECTION 20.** 66.0903 (5) (f) of the statutes[✓] is created to read:

7 66.0903 (5) (f) A project of public works involving the erection, construction,
8 repair, remodeling, or demolition of a residential property containing 2 dwelling
9 units or less.

10 **SECTION 21.** 66.0903 (8) of the statutes[✓] is amended to read:

11 66.0903 (8) POSTING. For the information of the employees working on the
12 project of public works, the prevailing wage rates determined by the department ~~or~~
13 ~~exempted local governmental unit~~, the prevailing hours of labor, and the provisions
14 of subs. (10) (a) and (11) (a) shall be kept posted by the local governmental unit in at
15 least one conspicuous and easily accessible place on the site of the project or, if there
16 is no common site on the project, at the place normally used by the local
17 governmental unit to post public notices.

18 **SECTION 22.** 66.0903 (10) (am) of the statutes[✓] is repealed.

19 **SECTION 23.** 66.0903 (10) (c) of the statutes[✓] is amended to read:

20 66.0903 (10) (c) If requested by any person, the department shall inspect the
21 payroll records of any contractor, subcontractor, or agent performing work on a
22 project of public works that is subject to this section to ensure compliance with this
23 section. In the case of a request made by a person performing the work specified in
24 sub. (4), if the department finds that the contractor, subcontractor, or agent subject
25 to the inspection is in compliance ~~and that the request is frivolous~~, the department

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1 shall charge the person making the request the actual cost of the inspection. In the
2 case of a request made by a person not performing the work specified in sub. (4), if
3 the department finds that the contractor, subcontractor, or agent subject to the
4 inspection is in compliance ~~and that the request is frivolous~~, the department shall
5 charge the person making the request \$250 or the actual cost of the inspection,
6 whichever is greater. ~~In order to find that a request is frivolous, the department must~~
7 ~~find that the person making the request made the request in bad faith, solely for the~~
8 ~~purpose of harassing or maliciously injuring the contractor, subcontractor, or agent~~
9 ~~subject to the inspection, or that the person making the request knew, or should have~~
10 ~~known, that there was no reasonable basis for believing that a violation of this~~
11 ~~section had been committed.~~

12 **SECTION 24.** 66.0903 (11) (a) 1., 3. and 5. of the statutes are consolidated,
13 renumbered 66.0903 (11) (a) and amended to read:

14 66.0903 (11) (a) Any contractor, subcontractor, or contractor's or
15 subcontractor's agent who fails to pay the prevailing wage rate determined by the
16 department under sub. (3) or who pays less than 1.5 times the hourly basic rate of
17 pay for all hours worked in excess of the prevailing hours of labor is liable to any
18 affected employee in the amount of his or her unpaid wages or his or her unpaid
19 overtime compensation and in an additional equal amount as liquidated damages as
20 ~~provided under subd. 2., 3., whichever is applicable. 3. In addition to or in lieu of~~
21 ~~recovering the liability specified in subd. 1. as provided in subd. 2., any. An action~~
22 to recover the liability may be maintained in any court of competent jurisdiction by
23 any employee for and in behalf of that employee and other employees similarly
24 situated may commence an action to recover that liability in any court of competent
25 jurisdiction. If the court finds that a contractor, subcontractor, or contractor's or

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1 ~~subcontractor's agent has failed to pay the prevailing wage rate determined by the~~
2 ~~department under sub. (3) or has paid less than 1.5 times the hourly basic rate of pay~~
3 ~~for all hours worked in excess of the prevailing hours of labor, the court shall order~~
4 ~~the contractor, subcontractor, or agent to pay to any affected employee the amount~~
5 ~~of his or her unpaid wages or his or her unpaid overtime compensation and an~~
6 ~~additional amount equal to 100 percent of the amount of those unpaid wages or that~~
7 ~~unpaid overtime compensation as liquidated damages.~~ 5. No employee may be a
8 party plaintiff to an the action under subd. 3. unless the employee consents in writing
9 to become a party and the consent is filed in the court in which the action is brought.
10 Notwithstanding s. 814.04 (1), the court shall, in addition to any judgment awarded
11 to the plaintiff, allow reasonable attorney fees and costs to be paid by the defendant.

12 **SECTION 25.** 66.0903 (11) (a) 2. of the statutes is repealed. ✓

13 **SECTION 26.** 66.0903 (12) (a) of the statutes is amended to read: ✓

14 66.0903 (12) (a) Except as provided under pars. (b) and (c), the department
15 shall notify any local governmental unit applying for a determination under sub. (3)
16 ~~and any local governmental unit exempted under sub. (6)~~ of the names of all persons
17 whom the department has found to have failed to pay the prevailing wage rate
18 determined under sub. (3) or has found to have paid less than 1.5 times the hourly
19 basic rate of pay for all hours worked in excess of the prevailing hours of labor at any
20 time in the preceding 3 years. The department shall include with each name the
21 address of the person and shall specify when the person failed to pay the prevailing
22 wage rate and when the person paid less than 1.5 times the hourly basic rate of pay
23 for all hours worked in excess of the prevailing hours of labor. A local governmental
24 unit may not award any contract to the person unless otherwise recommended by the
25 department or unless 3 years have elapsed from the date the department issued its

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findings or the date of final determination by a court of competent jurisdiction, whichever is later.

SECTION 27. 66.0904 of the statutes[✓] is repealed.

SECTION 28. 103.49 (1) (am) of the statutes[✓] is repealed.

SECTION 29. 103.49 (1) (bj) of the statutes[✓] is amended to read:

103.49 (1) (bj) "Minor service or maintenance work" means a project of public works that is limited to minor crack filling, chip or slurry sealing, or other minor pavement patching, not including overlays, ~~that has a projected life span of no longer than 5 years; the depositing of gravel on an existing gravel road applied solely to maintain the road; road shoulder maintenance;~~ cleaning of drainage or sewer ditches or structures; or any other limited, minor work on public facilities or equipment that is routinely performed to prevent breakdown or deterioration.

SECTION 30. 103.49 (1) (br) of the statutes[✓] is created to read:

103.49 (1) (br) "Multiple-trade project of public works" means a project of public works in which no single trade accounts for 85 percent or more of the total labor cost of the project.

SECTION 31. 103.49 (1) (d) 2. of the statutes[✓] is amended to read:

103.49 (1) (d) 2. If there is no rate at which a majority of the hours worked in the trade or occupation on projects in the area is paid, "prevailing wage rate" for any trade or occupation engaged in the erection, construction, remodeling, repairing or demolition of any project of public works in any area means the average hourly basic rate of pay, weighted by the number of hours worked, plus the average hourly contribution, weighted by the number of hours worked, for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefit, paid directly or indirectly for all hours worked ~~at the hourly basic rate of pay of the~~

BILL**SECTION 31**

1 ~~highest-paid 51% of hours worked~~ in that trade or occupation on projects in that
2 area.

3 **SECTION 32.** 103.49 (1) (em) of the statutes [✓]is created to read:

4 103.49 (1) (em) "Single-trade project of public works" means a project of public
5 works in which a single trade accounts for 85 percent or more of the total labor cost
6 of the project.

7 **SECTION 33.** 103.49 (1m) (intro.) and (a) [✓]of the statutes are consolidated,
8 renumbered 103.49 (1m) and amended to read:

9 103.49 (1m) APPLICABILITY. Subject to sub. (3g), this section applies to any
10 project of public works erected, constructed, repaired, remodeled, or demolished for
11 the state or a state agency, ~~other than a highway, street, or bridge construction or~~
12 ~~maintenance project, including all of the following:~~ (a) ~~A~~ a project erected,
13 constructed, repaired, remodeled, or demolished by one state agency for another
14 state agency under any contract or under any statute specifically authorizing
15 cooperation between state agencies.

16 **SECTION 34.** 103.49 (1m) (b) of the statutes [✓]is renumbered 103.49 (3g) (d) and
17 amended to read:

18 103.49 (3g) (d) A project in which the completed facility is leased, purchased,
19 lease purchased, or otherwise acquired by, or dedicated to, the state in lieu of the
20 state or a state agency contracting for the erection, construction, repair, remodeling,
21 or demolition of the facility.

22 **SECTION 35.** 103.49 (1m) (c) of the statutes [✓]is renumbered 103.49 (3g) (e) and
23 amended to read:

24 103.49 (3g) (e) A "~~sanitary sewer~~" road, street, bridge, sanitary sewer, or water
25 main project in which the completed road, street, bridge, sanitary sewer, or water

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main is acquired by, or dedicated to, the state for ownership or maintenance by the state.

SECTION 36. 103.49 (2m) (b) (intro.) of the statutes is renumbered 103.49 (2m) (b) and amended to read:

103.49 (2m) (b) ~~Notwithstanding par. (a) 1., a~~ A laborer, worker, mechanic, or truck driver who is regularly employed to process, manufacture, pick up, or deliver materials or products from a commercial establishment that has a fixed place of business from which the establishment regularly supplies processed or manufactured materials or products is not entitled to receive the prevailing wage rate determined under sub. (3) or to receive at least 1.5 times his or her hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor ~~unless any of the following applies:~~

SECTION 37. 103.49 (2m) (b) 1. of the statutes is repealed.

SECTION 38. 103.49 (2m) (b) 2. of the statutes is repealed.

SECTION 39. 103.49 (2m) (d) of the statutes is created to read:

103.49 (2m) (d) 1. In this paragraph, "subjourneyperson" means a worker, other than an apprentice, laborer, heavy equipment operator, or truck driver, who primarily works under the direction of, and who assists, a skilled trade employee by frequently using the tools of a specific trade.

2. A contractor, subcontractor, or contractor's or subcontractor's agent may employ a subjourneyperson on any project to which this section applies.

SECTION 40. 103.49 (2m) (e) of the statutes is created to read:

103.49 (2m) (e) In performing work on a project to which this section applies, a contractor, subcontractor, or contractor's or subcontractor's agent may employ a laborer, worker, mechanic, or truck driver in incidental work outside of that

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1 individual's usual trade or occupation for not more than 25 percent of the hours
2 worked by that individual in a workweek.

3 **SECTION 41.** 103.49 (3) (ar) of the statutes is[✓] amended to read:

4 103.49 (3) (ar) In determining prevailing wage rates under par. (a) or (am), the
5 department may not use data from projects that are subject to this section, s. 66.0903,
6 ~~66.0904~~, 103.50, or 229.8275, or 40 USC 3142 unless the department determines that
7 there is insufficient wage data in the area to determine those prevailing wage rates,
8 in which case the department may use data from projects that are subject to this
9 section, s. 66.0903, ~~66.0904~~, 103.50, or 229.8275, or 40 USC 3142.

10 **SECTION 42.** 103.49 (3g) (a) of the statutes is[✓] amended to read:

11 103.49 (3g) (a) A single-trade project of public works for which the estimated
12 project cost of completion is less than ~~\$25,000~~ \$50,000 or a multiple-trade project of
13 public works for which the estimated project cost of completion is less than \$250,000.

14 **SECTION 43.** 103.49 (3g) (b) of the statutes is[✓] amended to read:

15 103.49 (3g) (b) ~~A~~ Work performed on a project of public works ~~in which the~~
16 ~~labor for the project is provided by unpaid volunteers for which the state or the state~~
17 ~~agency contracting for the project is not required to compensate any contractor,~~
18 ~~subcontractor, contractor's or subcontractor's agent, or individual for performing the~~
19 work.

20 **SECTION 44.** 103.49 (3g) (f) of the statutes is created to read:

21 103.49 (3g) (f) A public highway, street, or bridge project.

22 **SECTION 45.** 103.49 (3g) (g) of the statutes is[✓] created to read:

23 103.49 (3g) (g) A project of public works involving the erection, construction,
24 repair, remodeling, or demolition of a residential property containing 2 dwelling
25 units or less.

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✓
1 **SECTION 46.** 103.49 (5) (am) of the statutes is repealed.

2 **SECTION 47.** 103.49 (5) (c) of the statutes is amended to read:

3 103.49 (5) (c) If requested by any person, the department shall inspect the
4 payroll records of any contractor, subcontractor, or agent performing work on a
5 project of public works that is subject to this section to ensure compliance with this
6 section. In the case of a request made by a person performing the work specified in
7 sub. (2m), if the department finds that the contractor, subcontractor, or agent subject
8 to the inspection is in compliance ~~and that the request is frivolous~~, the department
9 shall charge the person making the request the actual cost of the inspection. In the
10 case of a request made by a person not performing the work specified in sub. (2m),
11 if the department finds that the contractor, subcontractor, or agent subject to the
12 inspection is in compliance ~~and that the request is frivolous~~, the department shall
13 charge the person making the request \$250 or the actual cost of the inspection,
14 whichever is greater. ~~In order to find that a request is frivolous, the department must~~
15 ~~find that the person making the request made the request in bad faith, solely for the~~
16 ~~purpose of harassing or maliciously injuring the contractor, subcontractor, or agent~~
17 ~~subject to the inspection, or that the person making the request knew, or should have~~
18 ~~known, that there was no reasonable basis for believing that a violation of this~~
19 ~~section had been committed.~~

20 **SECTION 48.** 103.49 (6m) (ag) of the statutes is repealed.

21 **SECTION 49.** 103.50 (1) (d) 2. of the statutes is amended to read:

22 103.50 (1) (d) 2. If there is no rate at which a majority of the hours worked in
23 the trade or occupation in the area is paid, "prevailing wage rate" means the average
24 hourly basic rate of pay, weighted by the number of hours worked, plus the average
25 hourly contribution, weighted by the number of hours worked, for health insurance

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1 benefits, vacation benefits, pension benefits and any other bona fide economic
2 benefit, paid directly or indirectly for all hours worked ~~at the hourly basic rate of pay~~
3 ~~of the highest-paid 51% of hours worked~~ in that trade or occupation in that area.

4 **SECTION 50.** 103.50 (2m) (b) (intro.) of the statutes is renumbered 103.50 (2m)
5 (b) and amended to read:

6 103.50 (2m) (b) ~~Notwithstanding par. (a) 1., a~~ A laborer, worker, mechanic, or
7 truck driver who is regularly employed to process, manufacture, pick up, or deliver
8 materials or products from a commercial establishment that has a fixed place of
9 business from which the establishment regularly supplies processed or
10 manufactured materials or products is not entitled to receive the prevailing wage
11 rate determined under sub. (3) or to receive at least 1.5 times his or her hourly basic
12 rate of pay for all hours worked in excess of the prevailing hours of labor ~~unless any~~
13 ~~of the following applies:~~

14 **SECTION 51.** 103.50 (2m) (b) 1. of the statutes is repealed.

15 **SECTION 52.** 103.50 (2m) (b) 2. of the statutes is repealed.

16 **SECTION 53.** 103.50 (4m) of the statutes is amended to read:

17 103.50 (4m) WAGE RATE DATA. In determining prevailing wage rates for projects
18 that are subject to this section, the department shall use data from projects that are
19 subject to this section, s. 66.0903, ~~66.0904~~, or 103.49, or 40 USC 3142.

20 **SECTION 54.** 103.503 (title) of the statutes is amended to read:

21 **103.503 (title) Substance abuse prevention on public works and**
22 **publicly funded projects.**

23 **SECTION 55.** 103.503 (1) (a) of the statutes is amended to read:

24 103.503 (1) (a) "Accident" means an incident caused, contributed to, or
25 otherwise involving an employee that resulted or could have resulted in death,

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1 personal injury, or property damage and that occurred while the employee was
2 performing the work described in s. 66.0903 (4), ~~66.0904 (3)~~, or 103.49 (2m) on a
3 project.

4 **SECTION 56.** 103.503 (1) (c) of the statutes is amended to read: ✓

5 103.503 (1) (c) "Contracting agency" means a local governmental unit, as
6 defined in s. 66.0903 (1) (d), or a state agency, as defined in s. 103.49 (1) (f), ~~or an~~
7 ~~owner or developer under s. 66.0904~~ that has contracted for the performance of work
8 on a project.

9 **SECTION 57.** 103.503 (1) (e) of the statutes is amended to read: ✓

10 103.503 (1) (e) "Employee" means a laborer, worker, mechanic, or truck driver
11 who performs the work described in s. 66.0903 (4), ~~66.0904 (3)~~, or 103.49 (2m) on a
12 project.

13 **SECTION 58.** 103.503 (1) (g) of the statutes is amended to read: ✓

14 103.503 (1) (g) "Project" ~~mean~~ means a project of public works that is subject
15 to s. 66.0903 or 103.49 ~~or a publicly funded private construction project that is subject~~
16 ~~to s. 66.0904.~~

17 **SECTION 59.** 103.503 (2) of the statutes is amended to read: ✓

18 103.503 (2) SUBSTANCE ABUSE PROHIBITED. No employee may use, possess,
19 attempt to possess, distribute, deliver, or be under the influence of a drug, or use or
20 be under the influence of alcohol, while performing the work described in s. 66.0903
21 (4), ~~66.0904 (3)~~, or 103.49 (2m) on a project. An employee is considered to be under
22 the influence of alcohol for purposes of this subsection if he or she has an alcohol
23 concentration that is equal to or greater than the amount specified in s. 885.235 (1g)
24 (d).

25 **SECTION 60.** 103.503 (3) (a) 2. of the statutes is amended to read: ✓

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1 103.503 (3) (a) 2. A requirement that employees performing the work described
2 in s. 66.0903 (4), ~~66.0904 (3)~~, or 103.49 (2m) on a project submit to random,
3 reasonable suspicion, and post-accident drug and alcohol testing and to drug and
4 alcohol testing before commencing work on a project, except that testing of an
5 employee before commencing work on a project is not required if the employee has
6 been participating in a random testing program during the 90 days preceding the
7 date on which the employee commenced work on the project.

8 **SECTION 61.** 104.001 (3) (am) of the statutes is repealed. ✓

9 **SECTION 62.** 109.09 (1) of the statutes is amended to read: ✓

10 109.09 (1) The department shall investigate and attempt equitably to adjust
11 controversies between employers and employees as to alleged wage claims. The
12 department may receive and investigate any wage claim which is filed with the
13 department, or received by the department under s. 109.10 (4), no later than 2 years
14 after the date the wages are due. The department may, after receiving a wage claim,
15 investigate any wages due from the employer against whom the claim is filed to any
16 employee during the period commencing 2 years before the date the claim is filed.
17 The department shall enforce this chapter and ss. 66.0903, ~~66.0904~~, 103.02, 103.49,
18 103.82, 104.12, and 229.8275. In pursuance of this duty, the department may sue the
19 employer on behalf of the employee to collect any wage claim or wage deficiency and
20 ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions
21 under s. 109.10, the department may refer such an action to the district attorney of
22 the county in which the violation occurs for prosecution and collection and the
23 district attorney shall commence an action in the circuit court having appropriate
24 jurisdiction. Any number of wage claims or wage deficiencies against the same
25 employer may be joined in a single proceeding, but the court may order separate

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1 trials or hearings. In actions that are referred to a district attorney under this
2 subsection, any taxable costs recovered by the district attorney shall be paid into the
3 general fund of the county in which the violation occurs and used by that county to
4 meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office
5 of the district attorney who prosecuted the action.

6 **SECTION 63.** 111.322 (2m) (c) of the statutes[✓] is amended to read:

7 111.322 (2m) (c) The individual files a complaint or attempts to enforce a right
8 under s. 66.0903, ~~66.0904~~, 103.49, or 229.8275 or testifies or assists in any action or
9 proceeding under s. 66.0903, ~~66.0904~~, 103.49, or 229.8275.

10 **SECTION 64.** 227.01 (13) (t) of the statutes[✓] is amended to read:

11 227.01 (13) (t) Ascertains and determines prevailing wage rates under ss.
12 66.0903, ~~66.0904~~, 103.49, 103.50, and 229.8275, except that any action or inaction
13 which ascertains and determines prevailing wage rates under ss. 66.0903, ~~66.0904~~,
14 103.49, 103.50, and 229.8275 is subject to judicial review under s. 227.40.

15 **SECTION 65.** 946.15 (title) of the statutes[✓] is amended to read:

16 **946.15 (title) Public and publicly funded construction contracts at less**
17 **than full rate.**

18 **SECTION 66.** 946.15 (1) of the statutes[✓] is amended to read:

19 946.15 (1) Any employer, or any agent or employee of an employer, who induces
20 any person who seeks to be or is employed pursuant to a public contract as defined
21 in s. 66.0901 (1) (c) or who seeks to be or is employed on a project on which a prevailing
22 wage rate determination has been issued by the department of workforce
23 development under s. 66.0903 (3), ~~66.0904 (4)~~, 103.49 (3), 103.50 (3), or 229.8275 (3)
24 or by a local governmental unit, as defined in s. ~~66.0903 (1) (d)~~, under s. ~~66.0903 (6)~~
25 or ~~66.0904 (6)~~ to give up, waive, or return any part of the compensation to which that

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1 person is entitled under his or her contract of employment or under the prevailing
2 wage rate determination issued by the department ~~or local governmental unit~~, or
3 who reduces the hourly basic rate of pay normally paid to an employee for work on
4 a project on which a prevailing wage rate determination has not been issued under
5 s. 66.0903 (3) ~~or (6), 66.0904 (4) or (6)~~, 103.49 (3), 103.50 (3), or 229.8275 (3) during
6 a week in which the employee works both on a project on which a prevailing wage
7 rate determination has been issued and on a project on which a prevailing wage rate
8 determination has not been issued, is guilty of a Class I felony.

9 **SECTION 67.** 946.15 (2) of the statutes is amended to read: ✓

10 946.15 (2) Any person employed pursuant to a public contract as defined in s.
11 66.0901 (1) (c) or employed on a project on which a prevailing wage rate
12 determination has been issued by the department of workforce development under
13 s. 66.0903 (3), ~~66.0904 (4)~~, 103.49 (3), 103.50 (3), or 229.8275 (3) ~~or by a local~~
14 ~~governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) or 66.0904~~
15 ~~(6)~~ who gives up, waives, or returns to the employer or agent of the employer any part
16 of the compensation to which the employee is entitled under his or her contract of
17 employment or under the prevailing wage determination issued by the department
18 ~~or local governmental unit~~, or who gives up any part of the compensation to which
19 he or she is normally entitled for work on a project on which a prevailing wage rate
20 determination has not been issued under s. 66.0903 (3) ~~or (6), 66.0904 (4) or (6)~~,
21 103.49 (3), 103.50 (3), or 229.8275 (3) during a week in which the person works
22 part-time on a project on which a prevailing wage rate determination has been
23 issued and part-time on a project on which a prevailing wage rate determination has
24 not been issued, is guilty of a Class C misdemeanor.

25 **SECTION 68.** 946.15 (3) of the statutes is amended to read: ✓

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1 946.15 (3) Any employer or labor organization, or any agent or employee of an
2 employer or labor organization, who induces any person who seeks to be or is
3 employed on a project on which a prevailing wage rate determination has been issued
4 by the department of workforce development under s. 66.0903 (3), ~~66.0904 (4)~~, 103.49
5 (3), 103.50 (3), or 229.8275 (3) ~~or by a local governmental unit, as defined in s. 66.0903~~
6 ~~(1) (d), under s. 66.0903 (6) or 66.0904 (6)~~ to permit any part of the wages to which
7 that person is entitled under the prevailing wage rate determination issued by the
8 department or local governmental unit to be deducted from the person's pay is guilty
9 of a Class I felony, unless the deduction would be permitted under 29 CFR 3.5 or 3.6
10 from a person who is working on a project that is subject to 40 USC 3142.

11 **SECTION 69.** 946.15 (4) of the statutes is amended to read:

12 946.15 (4) Any person employed on a project on which a prevailing wage rate
13 determination has been issued by the department of workforce development under
14 s. 66.0903 (3), ~~66.0904 (4)~~, 103.49 (3), 103.50 (3), or 229.8275 (3) ~~or by a local~~
15 ~~governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) or 66.0904~~
16 ~~(6)~~ who permits any part of the wages to which that person is entitled under the
17 prevailing wage rate determination issued by the department or local governmental
18 unit to be deducted from his or her pay is guilty of a Class C misdemeanor, unless the
19 deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working
20 on a project that is subject to 40 USC 3142.

21 **SECTION 70. Initial applicability.**

22 (1) PREVAILING WAGES AND HOURS ON PUBLICLY FUNDED PRIVATE PROJECTS. The
23 treatment of sections 19.36 (12), 66.0903 (3) (av), 66.0904, 103.49 (3) (ar), 103.50
24 (4m), 103.503 (title), (1) (a), (c), (e), and (g), (2), and (3) (a) 2., 104.001 (3) (am), 109.09
25 (1), 111.322 (2m) (c), 227.01 (13) (t), and 946.15 (title), (1), (2), (3), and (4) of the

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statutes first applies to a project proposal, ~~including a preliminary plat or final plat under chapter 236 of the statutes, for a publicly funded private construction project, as defined in section 66.0904 (1) (i), 2009 stats., submitted to a local governmental unit for approval~~ on the effective date of this subsection.

(2) PREVAILING WAGE RATE. The treatment of sections 66.0903 (1) (g) 2., 103.49 (1) (d) 2., and 103.50 (1) (d) 2. of the statutes first applies to a prevailing wage determination made on the effective date of this subsection.

(3) SUBJOURNEYPERSONS, TRUCK DRIVERS, VOLUNTEERS, AND INCIDENTAL WORK. The treatment of sections 66.0903 (4) (b) (intro.), 1., and 2., (d), and (e) and (5) (b), 103.49 (2m) (b) (intro.), 1., and 2., (d), and (e) and (3g) (b), and 103.50 (2m) (b) (intro.), 1., and 2. of the statutes first applies to work performed on the effective date of this subsection, except that, if that work is performed under a contract that contains provisions that are inconsistent with those sections, the treatment of those sections first applies to work performed on the day on which that contract expires or is extended, modified, or renewed, whichever occurs first.

(4) INSPECTION OF PAYROLL RECORDS. The treatment of sections 66.0903 (10) (c) and 103.49 (5) (c) of the statutes first applies ~~to requests for the inspection of payroll records made~~ on the effective date of this subsection.

(5) PREVAILING WAGE RECORDS. The treatment of sections 66.0903 (10) (am) and 103.49 (5) (am) of the statutes first applies to work performed on the effective date of this subsection, except that, if that work is performed under a contract that contains provisions that are inconsistent with those sections, the treatment of those sections first applies to work performed on the day on which that contract expires or is extended, modified, or renewed.

with respect to a request for the inspection of the payroll records for a project of public works, contracted for a project of public works, contracted for

BILL

(6) PREVAILING WAGE; REMEDIES. The treatment of sections 66.0903 (11) (a) 1., 2., 3., and 5. and 103.49 (6m) (ag) of the statutes first applies to hours worked on the effective date of this subsection.

(7) TURNKEY, PRIVATE DEVELOPMENT, AND RESIDENTIAL PROJECTS. The treatment of sections 66.0903 (2) (c) and (d) and (5) (f) and 103.49 (1m) (b) and (c) and (3g) (g) of the statutes first applies to a contract for the erection, construction, remodeling, repair, or demolition of a project entered into, or extended, modified, or renewed, on the effective date of this subsection.

(END)

Barman, Mike

From: Berken, Nathan
Sent: Monday, May 23, 2011 2:36 PM
To: LRB.Legal
Subject: Draft Review: LRB 11-2069/2 Topic: Prevailing wage; restoration of prior law; other changes

Please Jacket LRB 11-2069/2 for the ASSEMBLY.